THE BOOKE

Called, The

Mirrour of Justices:

Made

By ANDREVV HORNE.

With the Book, called,

The Diversity of Courts,

AND

Their Jurisdictions.

Both translated out of the old *French* into the *English* Tongue.

By *W. H.* of Grays Inne Esquire.

Cassiodor.

Iura publica, certissima sunt vitæ humanæ solatia; infirmorum auxilia, impiorum fræna.

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The Translator to the Reader.

Courteous Reader:

IT hath ever been an Objection (grounded upon ignorance,) which hath been made by the meaner sort of the people to traduce the Common Lawes of *England*, and to bring the Professors thereof into contempt, to give out Speeches, and cast it in the teeth (as it were) of them, That the said Lawes are built but upon a sandy foundation, *viz.* the conceits of a few men; and that they are not grounded upon the Lawes of God; from which all Lawes of men ought to flow, as from a cleare and pure Fountaine.

This vulgar conceit and objection

hath been principally nouriſhed amongſt them, becauſe the Common Lawes have been kept from their view and underſtandings, being for the moſt part publiſhed in the French Tongue.

I muſt ingeniouſly confeſſe, That ſince it is a received Maxime amongſt us, That ignorance of the Law doth excuſe no man, that it were good that the fundamentall Lawes were publiſhed in our Mother Tongue, that ſo no perſon might be miſcounſant thereof. And I have obſerved, that it hath been the courſe and care of moſt of the late Publiſhers of our Lawes, to put them forth in ſuch Language as the common people might the better know them, and practice the due obſervation of them. But that I may with the more eaſe and plainneſſe anſwer that frivolous Objection, remove that fond conceit of the ignorant, vindicate our Commnn Lawes from ſo foule an aſperſion, and let the Objectors ſee from whence our Lawes deduce their

their Originall (though the learned Authour in the ensuing Treatise hath in part done it) yet for the cleare manifestation thereof I shall entreat the courteous Reader to be pleased favourably to accept of this short Breviary of the Grounds and originals of the Common Law, which I shall apply only as an introduction to the Work which followeth.

All Lawes are comprehended under a Three-fold division: 1. The Law of Nature. 2. The Law of God, of Faith, or of the Gospell. 3. The Law of man, made upon the Dictates of Reason; upon all which Lawes the Common Lawes of *England* are built, as upon firme and sure foundations.

The First is, that which is called the Law of Nature, which is ordained of God, and may be called Gods Law, united unto mans nature; for what was that Image of God in man, consisting of righteousnesse, holinesse and truth; but *Lex primordialis*, a primordiall Law, Gen. 1. ver. 26, 27.

readily requiring, and absolutely enabling the performance of duties of Piety unto God, and of equity to men both in habit and Act. *Antiquam scripta fuit lex in hominum mentibus vigebat.* God in the beginning wrote his Lawes in mens hearts, and therefore according unto the opinion of most learned Divines and Legists: *Lex naturæ nihil aliud est quam participatio legis æternæ in rationali creatura*; And according to others, *Lex naturæ est lumen ac discernen illud rationis, quo inter bonum & malum discernimus.* The most principall Precepts of the Law of Nature) which are also Maximes and Grounds of the Lawes of *England*) are 1. *Deum venerari*, 2. *Honestè vivere*, 3. *Patria magistratibus, & parentibus obedire*, 4. *Alteri ne facias quod tibi non vis fieri*. 5. *Suum cuique tribuere*. 6. *Tollere nocentes è medio propter servandam publicam salutem*. 7. *Rerum dominia proprietates, possessiones, & usum distinguere*; To honour God, to live honestly, to obey Magistrates, &c. to doe as we would

St. Ambros

be

be done unto, to render every one his due, to punish the guilty for the preservation of the Publique, to distinguish and settle the Dominion, propriety, possession, and use of temporall things.

These fundamentalls of the Law of Natvre are not principally acquired or obtained by Art, or Doctrine, but naturally ingrafted. Learning and instruction serve only to bring forth and encrease those naturall Seedes; but neither Learning nor instruction doe principally and originally give them; they are (saith *Socrates*) but as skilfull Midwives, whose office it is only to further the birth of the Childe not to beget the Childe. *Socrates.*

The Second is the Law of God, the Law of Faith, or of the Gospell; which may well be called *Lex amoris*, the Law of love. Is not this Nation Christian? Hath it not professed the common Faith for 1200. yeares? Doe not our Lawes all tend to the maintaining of peace, concord and love?

love fruits of the Goſpell? Are not all Statutes, Acts of Parliament, Conſtitutions Cuſtomes, made and uſed for the government of this people, founded upon ſuch principalls? Let the Objectors cite me any Law in uſe now amongſt us, which is not warranted by ſome expreſſe Goſpel, Text, either in the Letter, or not by neceſſary conſequence drawne from it; ſure I am that every Law, Cuſtome, Uſage, Priviledge, Preſcription, Act of Parliament, or Prerogative, which doth exalt it ſelfe above or beyond the Law of God, the Law of Chriſt, or the Law of Nature hath ever by the worthy Sages of our Lawes been declared to be void. It were to no purpoſe to inſtance upon particulars, it is ſufficient to ſay; That as it appertaineth to all godly and Chriſtian men to obſerve and keepe this Law; ſo to let all men know, that we are inſtructed by the worthy Profeſſors of the Goſpell of Chriſt, in the fundamentall Rules and grounds of this Law, to

live

live after it, and to direct all our words and actions according to it; and by it, and therefore I shall not say more of it.

The third the Lawes of men, and the municipall Lawes of this Realm, which although they may seeme to some to have their progeny from men, (for as *Solon* to the *Athenians*, *Lycurgus* to the *Lacedemonians*, *Numa Pompelius*, and *Attius Claudius* to the *Romans*, were accounted the Principall Authors and givers of Law to those severall Nations; so *Alured* or *Alfred*, *Athelstone*, *Edmundus*, *Edgar*, *Canutus*, *Edward* the Confessor, *William* the first, and *Henry* the first, called *Beauclark*, noble and famous Princes of this Nation, part of all whose Lawes are yet in force, were the chiefe promulgers of many necessary and good Lawes yet in use with us in this Realme) yet if we looke into their Laws we shall finde, that most of them have their rise from a higher power, from the Law of God, and the Law of Faith. It is tru e,

Dan. Hist. in tit. *Wil.* Conq.

Cicero l. 1. *De legibus.*

true, that some Historiographers have written, that the originall of the Common Lawes now in use flowed first out of *Normandy*, I shall decline that as to the generality; but as *Cicero* was bold to derive the pedigree of his *Roman* Law from the great God *Jupiter*, so I hope without offence I may be emboldened in the person of our Common Law, to say, That when the Lawes of God, and Reason came first into *England*, then came I in.

The Temporall Lawes of this Kingdome may be divided into three parts. 1. The generall or Common Law. 2. The customary Law: 3. Statute or Parliament Lawes; the end of all which are, *Ut sopianter jurgia & vitia propulsenter, & ut in regno conservetur pax & justitia.*

Bracton. lib. Serm.

Egerton, Postant.

The Common Law is nothing else but pure and tryed Reason (*Responsa prudentum*) allowed and knowne containing the Principalls and Maximes of Law (consonant unto the Lawes of God) with a certaine method

method for the orderly proceeding therein; the rest consisting in the minds of the Sages of the Law, ready by Argument to approve what is truth, and under-propt with Authorities to condemne what is false.

The customary Laws are certaine ancient Customes grounded upon Reason, which abridge the course of the Common Law. The diversity of Customes have growne by reason of the severall Nations who have had government over this Kingdom; as 1. The *Britaines*. 2. The *Romans*. 3. The *Britaines* againe. 4. The *Saxons*. 5. The *Danes*, and lastly the *Normans*; all which sorts of people have left behind them within this Realme part of their Language, and part of their Country usages.

The Customes within the Realme are called by severall names: as

As { *Customes.* *Prescriptions.* *Usages.* *By Laws.*

Customs

Customs extend properly to Countries, Cities, Boroughs, Towns Corporate, and large Signiories. 2. Prescriptions run with persons who have capacities to have Interests and properties. 3. Usages referre to Places or Townes not incotporate, as to Inhabitants and the like. 4. By-Lawes are properly made in Courts by the Tenants of the Mannor or Precinct, or out of Courts, with a common consent for good order and Neighbourly usage. The efficient causes of good and lawfull Customes are, Reason and Time, the one begetting, the other bringing forth and continuing the same; in one place Master *Lit* saith, This is a good Custome, because it stands with some reason; in another, This is a void Custom because it is against reason. *Litr. pl. 209. 212.*

3. The last is Statute or Parliament Lawes; Parliaments have been ancient, they were in the time of the *Saxons*, long before the *Norman* Conquest (for as the Proverb is) In the time of the *Dawes*, the Lawes lay then in

in water, the people were governed rather by Princes wills then publike Lawes, for then (as one saith) *Sepultum fuit jus in regno, leges & consuitudines simul sopitæ, temporibus illarum prava voluntas vis & violentia magis regnabant, quam judicium in terra.*) And although in the *Saxons* time I finde the usuall words of the Acts then to have been: *Edictum, Constitutio*, little mention being made of the Commons, yet I further finde that, *Tum demum leges vim & vigorem habuerunt, cum fuerunt non modo institutæ sed firmatæ approbatione Communitatis.*

Our Author and others tell us, That the administration of Justice was onely originally in the Crown, and Kings in their own Persons rode Circuit every seven yeares through the Realme, to heare the Complaints of their People, and to redresse Publique grievances. But after the division of the Realme into Shires, publique Courts were erected; as the County Court, Sheriffes Turnes, Hundred

20. *H.* 7. 7. c. 12. part 86. *Bracton*, lib. 2. cap. 24.

Hundred Court, Court Leets, Viewes of Frankpledges, and Court Barons, for the conservation of the Kings Peace, and the hearing and determining of all differences, Debts, Contracts, &c. which might arise betwixt Party and Party; and all persons were sorted into Companies or Societies, wherein ten of the principall men called, *Capitales plegii*, or *Franchi plegii*, because they were Freemen, stood as Sureties for the residue, that they should stand to Justice, and not fly from it when they had committed any offence; The Law of Saint *Edward* is most excellent to that purpose in these words; *Est quedam summa & maxima securitas qua omnes Status firmissimo sustinentur, viz. Ut unusquisque stabiliat se sub fidejussionis securitate, (quod Angli vocant Fribuerher;) Hæc securitas hoc modo fiebat, quod de omnibus villis totius Regni sub fidejussione decemali deberent esse universi:* And to that purpose also is the Ordinance of King *Alured*; *Decrevit Aluredus ut liberæ conditionis quisque in*

Legis Sancti Edwardi in Lambert.

in Centuriam aſcriberetur aliquam atque in decemvirale coniiceretur Collegium, the difference only conſiſting in this, That King *Alureds* Law extended but to Freemen, Saint *Edwards* to all men.

This *Decemalis fidenſſio*, or *Decemvirale Collegium*, by our Author is called the Decenery, who were charged to bring forth the Perſon of every offender to anſwer unto the Law; whereof Mr. *Bracton* ſpeaketh in theſe words: *De eo autem qui fugam fecerit* (he ſpeaketh of one after a Felony committed) *Diligenter erit inquirendum ſi fuerit in Franciplegio & decenna, & tunc erit decenna in miſericordia coram Juſticiariis quia non habent ipſum malefactorem ad rectum.* And according to that Law if a Felon after his flying, or conviction were poſſeſſed of Goods, the Towne or Decenary was anſwerable for the ſame. And if the ſame were imbeſſelled, or holden from them, the Decenery might ſeaze thoſe goods in whoſe poſſeſſion ſoever they were found; as

Bracton, lib. 3. cap. 10.

13. *H.* 4. 13. 6.

a appeareth

appeareth by 3. E. 3. Itin North, *Fitz Corone* 366. *quod vicecomes & Decennarii ſeſire poſſunt cattella felonum in manus Domini Regis; Et vic. cattella illa deliberabit villæ ad reſpondend. Regi in itinere, quod ſi vic. nec Decinnarii ſeſierint villa reſpondebit dom. regi in itenere*, but this Law hath been ſince altered by the Statute of 3. E. 3.

I have Courteous Reader ſtood the longer upon theſe things, as well to vindicate the Common Lawes from thoſe weak cavills of the ruder ſort, as to demonſtrate the care our ancient Kings and Counſells have had for the peaceable Government of the people of the Land, according to the right rules of Juſtice, deduced from the Law of Nature, of God, and of right Reaſon; and I wiſh that Princes in this age would conſider and put in practice, that golden Rule of *Demoſthenes*: *Benè gubernare, rectè judicare, juſtè facere*; ſo ſhould their Kingdomes flouriſh, and they themſelves be in high eſtimation

βουλεύειν καλῶς, κρίνειν ὀρθῶς, πράττειν δικαίως. *Demoſth.*

in

in the eyes of all their people.

In theſe diſtracted times, wherein the fundamentall Lawes, and Liberties of the Subject have been by a Malignant Party ſo much oppoſed, I have offered this Treatiſe, intituled, *The Mirrour of Juſtices*; I have tranſlated the ſame out of the *French* Tongue into *Engliſh*: In this Booke many of thoſe fundamentall Lawes ſo much of late called upon, are to be found (though I doe not warrant all in this Booke to be Law at this day; many of the Lawes being abſolete, and altered by Acts of Parliaments and common uſages) It hath been ſome difficulty for me to finiſh it: And although that the Manuſcript Copy be in the Originall very imperfect: the *French* impreſſion by miſ joyning of words in many places without ſence, and falſe Printed; the Termes of Law therein for the moſt part obſolete and worne out; yet have I endeavoured (as all Tranſlators of Bookes, eſpecially of Bookes of the Law ought) to

keep my ſelfe cloſe to the words and meaning of the Authour, and of the Law then in uſe and practiſe, well knowing, that Lawes many times have their interpretation according to the ſtrict Letter, and not according to ſuch flouriſhes of Rhetorique and Oratory as may be put upon them.

I entreat thee, Courteous Reader, to accept of it as it is; if thou finde any Errours in the Tranſlation (as I ſuppoſe thou maiſt doe many) to paſſe them over, or amend them: If thou finde any thing in the Worke it it ſelfe which may advance the Common Lawes, or the Liberties of the Subject, or ſet forth the true Prerogative of Kings, to weigh them in the Balance of Juſtice: If thou finde any thing therein not fit to be publiſhed in theſe daies of diſtraction betwixt the King and prople, Conſider that this Worke was written in in the time of King *Edward* the firſt:

firſt: Conſider againe, it is not mine, but the Authors; who for his Antiquity and Learning in the Lawes of the Realme then in uſe, hath found the favour and honour to be cited by many of the grave Sages of our Publique Laws; ſo I commend it to thy favourable acceptance, and bid thee farewell:

Thy friend, who in his deſires ſtrives that the Common Lawes of the Land may now and for ever flouriſh.

W. H.

The
PREAMBLE.

WHen I perceived divers of thoſe who ſhould Governe the Law by Rules of Juſtice, to have a reſpect to their owne earthly profit, and chiefly to pleaſe Lords, and their friends, and to have a reſpect thereunto, and not to give their conſents that the right Uſages ſhould be ever put in writing, whereby power might be taken from them to pervert Judgement, and others to baniſh or diſ-inherite without

out punishment for the same; covering their offences by the exceptions of Errour and Ignorance, never or little regarding the Soules of Offenders condemned by their Judgments, as their duties and places required; having used to Judge the people according to their own heads by Abusions, and by the Examples of others erring in the Law, rather then by the Rules of the Holy Scripture, greatly to have erred from the true understanding thereof, building without any Foundation, and to Judge, and have Cognizance, and Jurisdiction in that which they little understood both in the Law of the Land, and of the Law of the Persons; as it is of those who take upon them Art to pronounce false Judgements,

ments, and by their Executions falſly to pervert the Priviledges of the KING, and the ancient Roles of his Treaſure. Taking the ſame into my ſerious conſideration, and the Foundation and Originall of the Uſages of *England* given by the Law, together with the Rewards of good Judges, and the puniſhments of others; I thought it needfull (wherein my Companions gave me their aſſiſtance) to ſtudy the Old and New Teſtament; and therein we found, That the Law is nothing elſe but Rules, delivered by our holy Predeceſſors in the Holy Scriptures, for the ſaving of Soules from perpetuall Damnation, notwithſtanding that the ſame were diſuſed by falſe Judges. And

we

we found that the Holy Scripture remained in the Old and New Testament.

The Old Testament contained 3. orders.
- The Law.
- The Prophets.
- The Hagiographies.

In the Law there are five Volumnes
- Genesis.
- Exodus.
- Leviticus.
- Numbers.
- Deuteronomy.

In the order of the Prophets are eight Volumnes.
- Josua.
- Judges.
- Samuel with the 1. and 2. of Kings.
- The 1. and 2. of Kings.
- Esay.
- Jeramy.
- Ezekiel.
- The Bookes of the 12. small Prophets.

In

In the order of Hagiographie are

- Job.
- The Pſalmes.
- Proverbs of *Solomon*.
- Eccleſiaſtes.
- The Song of *Solomon*.
- Daniel.
- Paralipomenon.
- Eſdras.
- Heſter.

And beſides theſe there are Bookes in the old Teſtament, although they are

Not authorized Canonicall.

- Tobie.
- Judeth.
- Maccabees.
- Eccleſiaſticus.

The

The New Testament contain 3 Books.
- The Evangelists.
- The Apostles.
- The holy Fathers.

The Evangelists contain 4 Volumnes.
- The Epistles of St. *Paul*.
- The Epistles of the Canon.
- The Revelation.
- The Acts of the Apostles.

The writings of the Apostles containe foure Volumnes.

Of the writings of the Fathers there is no certain matter agreed upon.

And we finde that our Lawes were agreeing to Scriptures, and that they were in a Language best known both for the help of us and the common people.

And

And for the condemning of falſe Judges, I compiled this little Book of the Law of Perſons, into 5. Chapters, that is to ſay,

1 Of offences againſt the peace.
2 Of Actions.
3 Of Exceptions.
4 Of Judgements.
5 Of Abuſions.

Which Booke I have called *The Mirrour of Juſtices*, according as I have found their vertues, and the moſt excellent ſubſtance after the time of King *Arthur*, uſed by holy uſages according to the Rules aforeſaid; and I deſire you that you would amend the defects thereof, according to ſuch lawfull and true warrants as you prove, both to learne the truth, and confound the daily abuſes of the Law.

Errata.

ERRATA.

FOl.4.l.18.for Iarrickshire,r.Everwickshire. f.5.l.12.r.after.f.7.l.5.r.estray.f.10.l.11.r thence f.10.l.20.r.exigent.f.11.l.22 r.right heirs.f.12.l.8.r. that married before.f.13.l.5.ad they. ib.l.6.r.Escuage.f.14.l.20.r.good.f.14.l.35.r. disseisins. f.16.l.27 r.Heresie.f.19.l.5.r.chinniage.f.25.l.5.r.offence. f.28.l.18.r.not. f.30.l.11.r.duresse. f.34.l.19.put out, to f.35.l.6. after appointed. ad time f.39.l.1.r.trove f.47.l.10.r.unknown.f.49.l.3.r.done.f 63 l.10.r.endictee.f.65.l.3.r Countors.f.66.l.12.put our(as)f.69 l.24 r.seisin.f.70.l.5 put out(the)f.76.l 9.r.contumacers.f.77.l.8.put out(the)f.93.l.14.r.disseisin.l.16.r. Darcein presentment. l.15.r. Mortdamicester f.99.l.1.promy.r. An.f.102.l.17.r.Replegiary facias.f.103.l.18.put out(of)f.105.after 100.f.r.five pounds.f.116 l 30.r.resummons.f.123.l.29.ad(in)f.126.l.3r.felony.f.150.l.6.ad (not)f.152.l.28,29.r.dissesivit.f.154.l.8.r.waging.f.155.l 14.ad (not)f.156.33.r. Records. f.163.l.29.r. enjoyed.f.167.l.14.r. plaintiffs f.167.l.26.put out(not).f.168.l.27 ad(be)f.176.l.23 r.plaint.f.178.l.14.r.remove.f.181.l.28.where the blank is,put (demeane)f.183.l.16.18.r.Law.f.190.l.10.r.pecuniary. f.191 l.3.r.they.f.192.l.9.r. judgement.f.198.l.3.r. if.f.201.l.30.r. contradict.f.208.l.11.r.by breach.f.209.l.21.r.or by.f.215.l.18 ad(say)f.217.l.9.put out(done)f.220.l.4.r.bought.f.225.l.28 r.payment of brasse.f.228.l.8.r. forcjudged.f.229.l.8.r.in.f.230 l.32 r.mortall.f.239.l.1.r.rarely.f.240.l.19.r.assist.f.243.l.17 r.had.f.256.l.33.r.granting.f.274.l.17.r.servants.f.288.l.18.r. tent.f.287.l.27 r.delivered.f.304.l.17.r.consideraverit.f.308.l. 3.r.villæ.ib.l.7.r.scienter.f.312.l.4.r. consuram.f.314.l.18.r. quærens.ibid.l.28.r.nervi.f.318.l.2.r.confessed.f.320.l.1.in the blank put the word(marke)f.322.l.23 r.possessor. ibib.l.28.r. et per.l.of.r.quærens recaperit.f.325.l.12.r.bosci.ibid.l.17.r. disseivit.ibib.l.13.r.villæ.l.25.r.prefato.f.324.l.11.r.conduction ibid.l.13.r. impedit. ibid.r.plenarly.f.325.l.16.r. per lapidem. ibid.l.17,18.r.jurat.l.20. ad per.

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CHAP. I.

SECT I.

Of the Offences againſt the Peace.

Of the Originall of the Law.

ALmighty God ſhewed more love to Man then to any other creature; when he made him after his own image and gave him underſtanding; conſidering that he ſtood continually ready to fall into ſinne by three manner of Adverſaries, and therefore he gave the Law to force and drive ſinners to ſalvation by earthly puniſhments; That for the pure love of God men would abſtain from ſinne, and thereof made *Moſes* their Teacher, which place the Pope now holdeth.

That Law by Ordinance of our holy Predeceſſors is divided into two Volumes;

into the Cannon Law, which conſiſteth in the amendment of Spirituall offences; Firſt, by Admonitions, Prayers, Reproofs, Excommunication; Secondly, into the written Law, which conſiſteth in the puniſhing of temporall Offences, by Summons, Attachments, and puniſhments or penalties.

Of the Spirituall Law, the Prelates judged; and lay Princes of the other Law: The Law whereof this ſumme is made, is the written Law of the ancient uſages warranted by the holy Scripture. And becauſe it is given to all in generall, it is called the Common Law. And becauſe there was no other Law but that, were generall Councels and Parliaments in uſe, and that diverſly in ſeverall places, according to the qualities of the people of divers Countries, and Boroughs; they were according to ancient priviledges changed for the eaſe of the people of thoſe places.

All our Uſages and Laws are alſo layed for the keeping and exaltation of the peace of God; and therefore it is to be known, That the people are not to be adjudged by ſimilitudes and examples not canonized, but by the love of Peace, of Chaſtity, of Temperance, of Charity, of Mercy, and of good Works.

CHAP,

CHAP. I.

SECT. 2.

Of the coming of the Engliſh into this Realme.

AFrer that God brought down low the Nobility of the Brittons, who uſed more force then right, he delivered the Realm to the moſt humble and ſimple of all the countries adjoyning; that is to ſay, to the *Saxons*, who from the parts of *Almaine* became Conquerours thereof, of which Nation there were forty Soveraigns who were Companions. Theſe Princes called this Land (*England*) which before was called Great Brittainie, or *Britania Major*. Theſe Princes after great warrs, tribulations, and troubles, ſuffered for a long time, choſe themſelves one King to Raign over them, to governe Gods people, and to maintaine and defend their Perſons and their goods in peace by Rules of Law. And at the beginning they made the King to ſweare; That he ſhould maintaine the Chriſtian Faith with all his power, and governe his people by Law, without having regard to the Perſon of any one; and that he ſhould be obedient to ſuffer Right as well as his other people ſhould be.

And afterwards this Realme was divided in Inheritances according to the number

of thoſe Companions who then remained in the Realme, into parts, **by Shieres,** and every one had a Shiere **delivered unto** him to keepe and defend againſt the enemies, according to every ones eſtate; That is to ſay.

Barkeſhire	*Glouceſterſhire*
Bedfordſhire	*Cambridgeſhire*
Buckinghamſhire	*Hertfordſhire*
Cornwall	*Herefordſhire*
Cheſterſhire	*Huntingtonſhire*
Cumberland	*Kent*
Dorſet	*London*
Devonſhire	*Leiceſterſhire*
Darbyſhire	*Lancaſhire*
Eſſex	*Lincolnſhire*
Barickſhire	*Middleſex*
Yorkſhire	*Surrey*
Norfolk	*Southampton*
Not inghamſhire	*Somerſetſhire*
Northumberland	*Shropſhire*
Northamptonſhire	*Staffordſhire*
Oxfordſhire	*Wiltſhire*
Rutlandſhire	*Weſtmerland*
Suffolk	*Worceſterſhire.*

And although that the King ought not to have any Peere in the Land; nevertheleſſe becauſe that the King of his owne wrong if he offend againſt any of his people, nor none of his Commiſſaries can be Judge and Party; It was behoveſull by the Law that he ſhould have Companions, to heare and determine of all Writs, and Plaints,

Plaints, of all wrongs, as well of the King, as of the Queene, and her Children; and of thoſe eſpeciall where one could not have otherwiſe Common Right: Theſe Companions are now called Countees, Earles, according to the Latine *Comites*; and ſo at this day are thoſe Shires called Counties, in Latine *Comitatus*; and that which is without theſe Counties, belongeth to the Engliſh by conqueſt.

After that time, theſe Companions, after the diviſion of the Realme into Shires, divided their people which they found ſcattering about into Centuries, and to every Century they appointed a Centeyner, and according to the number of the Centuries ſpake every Shire; and to every Centeyner they aſſigned his part by Metes and Bounds, to keep and defend the ſame with his Century, ſo that they were ready to run to their Armes at all times when the enemies came, or other needfull occaſion was. And theſe diviſions in ſome places are called Hundreds, according to the number of the firſt people; and in ſome places Tythings, or Wapentakes, according to the Engliſh; (which is in French, taking of Armes) Theſe diviſions they made, whereby the Peace, which conſiſted in charity and true love, was kept and maintained.

CHAP. 1.
SECT. 3.

Of the first Constitutions made by the ancient Kings.

Of King Alfred.

FOr the Estate of the Realme, King *Alfred* caused the Earles to meet, and Ordained for a perpetuall usage, That twice in the yeere, or ostner, if need were, in time of Peace they should assemble together at *London*, to speake their mindes for the guiding of the people of God, how they should keepe themselves from offences, should live in quiet, and should have right done them by certaine usages, and sound judgements.

King Ed. 1. By this Estate many Ordinances were made by many Kings, untill the time of the King that now is; the which Ordinances were abused, or not used by many, nor very currant, because they were not put into writing, and certainly published.

One of the Ordinances was; That every one should love his Creator with all his soule, and according to the points of the Christian Faith; And wrong, force, and every offence was forbidden.

And it was assented unto, that these things following should belong to Kings, and to the Right of Crown. *Soveraigne Jurisdiction.* The

The Soveraigne Juriſdiction throughout the whole Land unto the middeſt of the Sea encompaſſing the whole Realme, as franchiſes, treaſure found in the Land, Waife, Eſtray; goods of Felons and Fugitives which ſhould remaine out of any ones rights, Counties, Honours, Hundreds, Wards, Goales, Forreſts, chiefe Cities; the chiefe Ports of the Sea, great Mannours; theſe Rights the firſt Kings held, and of the reſidue of the Land they did infeoffe the Earles, Barons, Knights, Serjeants and others, to hold of the Kings by the ſervices provided, and ordained for the defence of the Realme according to the Articles of the ancient Kings.

Alſo Coronors were ordained in every Country, and Sheriffes to defend the Country, when the Counties were diſmiſſed of their Guards, and Bailiffes in the places of Centyners. And the Sheriffes and Bayliffes cauſed the Free-Tenants of their Bayliwicks to meet at the Counties and Hundreds; at which Juſtice was ſo done, that every one ſo judged his Neighbour by ſuch judgement as a man could not elſewhere receive in the like caſes, untill ſuch times as the cuſtomes of the Realme were put in writing, and certainly eſtabliſhed.

And although a Free-man commonly was not to ſerve without his aſſent, nevertheleſſe it was aſſented unto, that Free-Tenants ſhould meet together in the Counties, Hundreds, and the Lord

Courts, if they were not especially exempted to doe such Suits, and there judged their Neighbours.

And that Right should be done from 15. daies to 15. daies before the King and his Judges, and from month to month in the Counties, if the largeneſſe of the Counties required not a longer time; and that every three weekes Right should be administred in other Courts; And that every Free-Tenant was bound to doe such suite; And every Free-Tenant had ordinary jurisdiction: And that from day to day the Right should be hastened of Strangers, as in Courts of Pipowders according to the Law-Merchant.

The Turnes of Sheriffes and views of Free-pledges were Ordained; and it was Ordained, That none of the age of 14. yeeres or above, was to remaine in the Realme above forty daies, if they were not first sworne to the King by an Oath of Fealty, and received into a Decenery.

It was Ordained; That every Plaintiffe have a remediall Writ to his Sheriffes, or to the Lord of the Fee in this forme. *Queſtus eſt nobis C. quod O. &c. Et ideo tibi (vices noſtras in hoc parte committentes) precipimus quod cauſam illam audias & legitimo fine decidas.*

It was Ordained; That every one have a remediall Writ from the Kings Chancery, according to his plaint without difficulty, and that every one have the Proceſſe from the day of his plaint without the

ſeale of the Judge, or of ths Partie.

It was Ordained; That Coroners ſhould receive Appeales of Felony, and ſhould give the Judgements of Our-lawries, and ſhould make the viſnes in the Cauſes aforeſaid; And that all the next Townes ſhould preſent to the Coroners in the Countie the miſchances of the bodies of the people, and the names of the finders.

And that every Country ſhould preſent Felonies, Miſchances, and other Articles preſentable in the Eyres for offences, that the Kings might ſend to ſummon them to appear againſt the comming of the Kings, or of the Juſtices aſſigned to hold all Pleas.

And for the great dammages which the Commons ſuffer by Amercements iſſuing out for Concealements, and for fault of theſe preſentments in Eyres it was agreed unto; That theſe preſentments in Eyres ſhould be by the Coroners choſen by all the Commons of the County, and ſo the Coroners are as it were the Commons Bayliffes as to theſe Charges; nevertheleſſe they are the Kings miniſters, becauſe they take an Oath to him. For perſonall treſpaſſes, nevertheleſſe the Coroners are only puniſhable without any damage to thoſe who choſe them, unleſſe they have not ſufficient wherewith to ſatisfie for their treſpaſſes.

The Exchequer was Ordained in manner as followeth; and the pecuniary penalties of Earldomes, and Baronies certaine, and alſo

also of all Earldomes and Baronies entire or dismembred; and that those Amercements were afferred by the Barons of the Exchequer, and that the Estreats of the Amercements be sent into the Exchequer though they were amerced in the Kings Court.

It was Ordained; That after a plaint of wrong be sued, that no other have jurisdiction in the same place, before the first plaint be determined; and from thence came this clause in the Writ of Right, *Et nisi feceris vicecomes faciat.*

It was Ordained; That every one of the age of fourteene yeares and above should be ready to kill mortall offenders in their notorious sinnes, or to follow them from Towne to Towne with Hue and Cry; and if they could not kill them, the offenders to be put in exigent, and Out-lawed or banished.

And that none should be Out-lawed but for a mortall offence, and in no other County but where he committed the offence.

It was Ordained; That the Kings Courts should be open to all Plaints, by which they had originall Writs without delay, as well against the King or the Queene as against any other of the people for every injury but in case of life, where the plaint held without Writ.

It was Ordained; That no King of this Realme should change his money, nor impaire it, nor inhaunse it, nor make any other

other money but of Silver, without the ssent of the Lords and all the Commons

It was Ordained; That Felonies ſhould be tryed by Appeales, and that Appeales might ſometimes be ended by Battaile, and that Exigents of the Offenders ſhould continue by three County Courts before the Out-lawrie.

It was Ordained; That all Free-Tenants ſhould be obedient, and appeare at the Summons of the Lords of the Fee, and if one cauſed a man to be ſummoned elſewhere then in the Fees of the Avowants, or oftner then from Court to Court, that they were not bound to obey ſuch ſummmons, if not at the charges of the Avowants of the Summons.

It was Ordained; That Knights Fees ſhould come to the eldeſt Sonne by ſucceſſion of Inheritance, and that Socage Lands ſhould be partable amongſt the Heires ~~rights~~, and that none might alien but the fourth part of his Inheritance without the conſent of his Heire, and that none might alien his Lands by Purchaſe from his Heires, if Aſſignes were not ſpecified in the Deeds. rights

It was Ordained; That every one might endow his Wife *Ad oſtium Eccleſiæ*, or of the Monaſtery without the conſent of his Heires; that Heire Females, nor Widowes ſhould not Marry themſelves without the aſſent of their Lords, becauſe the Lords were not bound to take the Homages from their Enemies, or other unknowne

unknowne Persons, and the same is forbidden upon paine of Forfeitures, whether their Parents were consenting thereunto or not; and that Widowes in case they Marry without the consent of the Guardians of the Lands should lose their Dowries; That those also should be disinherited or lose their Dowries before that they Married; Widowes nevertheleſſe this should not forfeit their Inheritance for whoredome, and that the eldest Son should forfeit nothing to the prejudice of his Ancestour, nor his Heires living the Ancestour whose Heire apparant he is.

It was Ordained, That the Lords of Fees might Summon their Tenants by the award of their Peeres into the Lords Courts or into his Counties, or the Hundred at all times that they detaine or deny to doe their services in Deed, or in Word, *Ere contra*, that is to say; The Lords against the Tenants, and there they shall be acquitted or forfeit their Alegiance with the appurtenances by the judgement of the Suiters, and all their Tenancy; and the Tortious or outragious Lords shall lose their Fees and the Services, and the Tenements shall goe to the chief Lords of the Fee.

It was forbidden, that none be destreyned by his moveable goods, but by their bodies, or by their Fees, except in speciall Cases after mentioned.

It was Ordained that Infants should be in Ward; with their Lands and Goods, and

and that the Guardians ſhould anſwer for Treſpaſſes done by their Wards, and give ſatisfaction to thoſe who were damaged, except of Felonies; and that their Marriages ſhould be to the Lords, and that they ſhould have Eſſuage Reliefe and Aydes of their Tenants which they held of the Lords, as to make the Heire of the Lord Knight, and ro Marry their eldeſt Daughters, and that the Heires males ſhould doe homage to their Lords, and the Females ſhould ſweare fealty: and that the Inheritance ſhould diſcend to all the Children by warrant of right of the poſſeſſion, and that the male ſhould barre the female, and the next the more remote by warrant of right of propriety.

It was Ordained; That offenders guilty of death ſhould not be ſuffered to remaine amongſt the guiltleſſe, and that the King ſhould have the value of the Lands and the rent for one yeere, and the waſt of Felons Lands; and alſo that he ſhould have all *Deodand*; and that the Goods and Chattels of Uſurers ſhould remaine as Eſcheates to the Lords of the Fees.

Deodands. Usury.

Eſſoines were Ordained in mixt and reall Actions, and not in perſonall Actions, as after is ſaid.

It was forbidden that any one ſhould alien the profits of his Lands, or his Rents to any one out of the Realme; and it was alſo forbidden, that none ſold Wine in the Kingdome but by Tonnell or Pipe.

It was forbid that no money was to be carried out of the Realme; and that none should carry Wooll out of the Kingdom, nor should kill Lamb, or Calf which might live, nor Oxe which was not gelt.

It was forbidden; That no Bishop doe ordaine Lay-men to the Order of Clerkes above the number which are sufficient to serve the Churches, whereby the Kings Jurisdiction be destroyed: It was Ordained, That the poore should be sustained by Parsons, Rectors of the Church, and by the Parishioners, so that none of them dye for want of sustenance.

It was Ordained, That Faires and Markets should be in places, and that the buiers of Corne and Cattell should pay Tole to the Lords Bayliffes of Markets or Faires; That is to say, a false penny of six shillings of good, and of lesse, lesse, and of more, more; so that no Tole exceed a penny for one manner of Merchandize: and this Tole was given to testifie the Contracts, for that every private Contract was forbidden.

It was Ordained; That no action was receiveable to Judgement, if there was not a present proofe by Witnesses or other things; and that none was bound to Answer to any Suite, nor to appeare to any Action in the Kings Courts before the Kings Justices, before they found Sureries to Answer damages, and the costs of Suite if damages lay in the Case, except in foure offences; Disseisins, Cirtification of Disseisins,

ſerſius, Attaints, Rediſſeiſius and other Caſes. To which Ordinance King *Henry* the firſt put this mittigation in favour of poore Plaintiffes, that thoſe who had not ſufficient Sureties preſent, ſhould make ſatisfaction according to their ability, according to a reaſonable taxation; and in the ſame manner in Summances, and in hatred of Perjury Attaints were Ordained in all Actions.

It was forbidden; That no Merchant Alien ſhould repaire into *England* but at foure Fayres, and that none ſuch ſhould remaine in the Realm above forty daies.

Of the Curteſie of King *Henry* the firſt, It was granted; That all thoſe who ſurvived their Wives who were with childe by them, ſhould hold their Wives Inheritance for ever.

Many other Ordinances were made by them, and ſince have been made in aide of the Peace, according as afterwards ſhall be ſaid.

CHAP. I.

SECT. 4.

Of Offences, and the Diviſion of them.

THe diviſion of Offences is according to that which appeareth by the puniſhment. Mortall, or Veniall.

The mortall Offences are theſe:

Of { *Majeſty, Falſifying, Treaſon,* } *Burning, Larceny,* { *Burglary. Homicide,* }

Of

Of the Offence of Majesty.

The Crime of Majesty is an horrible offence done against the King; and that is either against the King of Heaven, or an earthly King.

Against the King of Heaven in three manners. *Heresie, Venery, Sodomy.*

Against the earthly King in 3. manners.

1 By these who kill the King, or compasse so to doe.

2 By those who dis-inherite the King of his Realm, by bringing in an Army, or compasse so to doe.

3 By those Adulterours who ravish the Kings Wife, the Kings lawfull eldest Daughter before she be married, being in the Kings custody; or the Nurse, or the Kings Ant, heire to the King.

Heresie is an evill and false belief, arising out of Error of the true Christian Faith; under this offence is Witchcraft or Divination, which are members of Heresie; and in case lesse notorious they come by presumptions of ill workes, which are by evill Art, arising from an ill beleife; and sometimes of a firmer beleif they doe wonders, and sometime they come by open confessions of Error.

So Erefie is an Art to Divine.

Divination properly is taken in the ill sence, as Prophesie is taken in a good sence.

Divination used to be in many kinds, whereof one manner of Divination was through an ill beliefe, by the which the Witch caused *Samuel* to rise, who warned *Saul* of his death.

Another

Another kind is Piromancy, which is done by fire.

Another is Areomancy, which used to be done by signes in the Ayre.

Another is Hydromancy, which is done by signes in the water.

Another is Geomancy, which is done by signes in the land.

Another is Negromancy, which is done by death, by making the dead to speake.

Another is South-saying, which was done by signes in the entrailes and bowels of Birds.

On the other part, some Diviners used to put trust in Lots, some in Songs, some in Verses of Psalmes; some in carrying Gospel and Charmes about their necks; some in Enchantments and Spels; some in signes in the entrailes of beasts, and in the palmes of the hands.

Some were called Mathematitions, and *Magij*, and Divined by the Starres.

Others were called *Arioles*, who tooke their answers from the Divell by evill men.

Others South-sayers, who numbred nights and daies, and houres whereby they ordered their businesse. There were many other kinds, all which manner of Diviners are to be by the Word of God himself, and authority of the Church to be excommunicated, and fobidden as much as Mahometry, and things against the true Faith. And this S. *Augustine* proves by many Reasons; & hence it is, that they who travell to Witches or Diviners to know things to

give that to the creatures which belongeth to God alone. Wherefore these wicked doers are to be removed from the society of Gods holy people, so that no good Christian be taken with their Art, nor partner in their sins.

CHAP. I.
SECT. 5.

THe Crime of Majesty, or offence against the King is neighbour to many other offences; For all those who commit Perjury, whereby every one lyeth against the King falleth into this offence. As the Kings Ministers who are sworn to doe Justice, and forswear themselves in any thing, so those who disseise the King of any of his Franchises, or of any manner of Right which belongeth to the Crowne by Occupations, or Purpestures, or in any other manner although it be no mortall offence.

Into Perjury fall all those Subjects of the King who appropriate to themselves Jurisdictions over the King, and of themselves make Judges, Sheriffes, Coronours, and other Officers to have Counsance of Law.

Into Perjury against the King fall all the Kings Subjects who appropriate to themselves Jurisdictions of Counties, Honours, Socknes, *Retorna brevium*, or any thing which may fall to his Inheritance; as Wards, Escheates, Reliefs, Suits, Services,

or

or Marriages, Faires, Markets, Enfang thef. Out Fangthef, Waiſe, Eſtray, Treaſure found in the ground, Warren in their owne lands, or in the lands of others, Tole, Pavage, Pontage, Chinuage, Murage, Carriage, or other the like Cuſtomes.

Into Perjury againſt the King fall thoſe the Kings Subjects who take Abjurations of Felons, and Fugitives, and are no Coroners nor warranted by the King ſo to doe; and thoſe who put out any Indicted, or Appealed of any Crime out of the Roll of the Coronour; and thoſe Coronours who oftner then once receive Appeales of Aprovers, or procure that a man who is innocent be appealed by an Approver. And thoſe who have detained Appeales of Approvers of forraign Acts, or whereby any forraigner is Appealed. And thoſe Coronours who wittingly ſuffer the goods and chattels of Fugitives to be leſſe valued then they ought to be of right; Or conceale them in part or in all, or detaine them to their owne uſes, to the damage of the King; or deliver them elſewhere then to the Townes; or for lucre have taken more then they ſhould in damage of the Townes; Or ſuffered their Servants to have the garments, or other things which are to be ſeized for the Kings uſe; or the garments of the dead, or delay to doe their office through covetouſneſſe.

Into Perjury againſt the King fall thoſe Officers who pardon Fines and Amerce-

ments which belong to the King, or any manner of penalty either corporall or pecuniary without speciall warrant. And those Officers who by Summons and Adjournments make the people to travaile in vaine, as to Goale deliveries, Assizes, Enquests, or otherwise; and all those Subjects who beare Armes against the King, or run away from his lawfull Army or Battaile; And those Ministers who unlawfully stop, or counsell the people that they goe not into War with the King, or that they are not bound to goe, where they have reasonable summons; and that the people be not made Knights but according to the Statutes of the Realme.

Into Perjury against the King fall all those the Kings Subjects, who hold Plea of Withernam, and have not returne of Writs, or hold Pleas of Distresses, or of any other thing which belongeth to the Kings Jurisdiction only, without the Kings speciall Commission; or hold Plea in caseof life, of imprisonment, of blood-shed, of false Judgements, or of any thing disavowable of right without the Kings Writ, or Commission

And all those the Kings Ministers who maintaine false Actions, false Appeales, or false defences.

Into Perjury against the King fall those Ministers who deny to Plaintiffes originall Writs possessory, Attaints, or of Formedon; or otherwise doe delay their Rights; and those who wrongfully doe delay, or disturbe

ſturbe right Judgements, and thoſe who wrongfully favour wrongfull Judgements; and all thoſe who uſe their Priviledges or Liberties wrongfully, or too largely, contrary to their knowledge.

Into Perjury againſt the King fall thoſe Miniſters who receive Fines to other uſes then to the Kings uſe for Treaſure trove, for Wrerk, Waife, Eſtray, Alliens for blood-ſhed, or impriſonment, Withernam, Reddiſſeſin, or Diſſeſin; or forſweare themſelves to reſiſt, that a lawfull Judgement have not execution; for Uſury, perpreſture upon the King, or for any other thing whereof the Counſance doth belong to the King.

And thoſe Receivers who pay not the Kings debts as they ought to doe, and are enjoyned, or render to him part for ſatisfaction of the whole, and doe not pay the King the reſt.

Into Perjury againſt the King fall thoſe who Charge the King wrongfully. And thoſe who ſpend the Kings Quarries, Timber, or other things otherwiſe then in the Kings Service without ſufficient warrant.

Into Perjury againſt the King fall Eſcheators, who make waſt of the Kings Wards, or in his Fees, or unlawfully take Veniſon, Fiſh, or other goods; and by their authority ſeiſe the goods of the dead, and for gaine releaſe them; or endow Widowes to the Kings loſſe; or make hurtfull extents for the King acompting for leſſe then

the very value to the King; Or willingly suffer possessions to remaine in Mortmaine which ought to be seized into the Kings hands, and whereof the King ought to have the profit, or which receive more of their Bailiwickes then they answer to the King, or who wittingly suffer Feoffements of Lands, or of Advowsons of Churches prejudiciall to the King, or who suffer them to alien Wards or Marriages to the Kings prejudice, or suffer the ages of infants to be proved in damage, or to the Kings prejudice take Fines for Wards, or Marriages without Writ, or deceive any one by colour of their Office; or leavy money upon any upon his owne proper Amercement.

Into Perjury against the King fall Sheriffes, who too high charge the People, by a surcharge upon the people of Horses, or of Doggs, and who leavy Fines or Amercements for escapes of Prisoners, or for any thing against Law before the escapes be adjudged by the Justices in Eyre, and who increase or diminish Fines, or Amercements beyond the Wills of the Afferrors or Jurours, and those Officers who conceal people deliverable to prison, and doe not bring them to Judgement.

Into Perjury fall all those Officers who are reproveable for the sufferance, negligence, or consent to the alienation of the franchises, or of the right of the King wrongfully, or to the occupying, or withholding of them.

And all those who elsewhere change old money

money which is forbidden for new, then at the Kings change.

CHAP. I.
SECT. 6.
Of Falsifying.

FAlsifying is done in two manners; by falsifying the Kings Seal, & his Mony.

His Seal may be falsifyed in many manners. It is alwaies falsifyed when a Writ is sealed, whereof the ingrossing, and the matter, or the forme is not justifiable by the King, nor by the Law, nor by the lawfull Customes of the Realme, which is not to be intended of every Writ abatable.

It is falsifyed if a man seale therewith after that the Chancellour, or other Keeper thereof hath lost his Warrant, either by death, or in any other manner.

It is falsifyed when a Writ, or a Parent passeth against the Kings forbidding. It is falsifyed by those who seale by ill Art, or by Warrants not justifiable, and it is falsifyed by those who seale and have not authority to seale.

Of falsifying the Money. The Money was Ordained round and quarterable, and use so to be made that the outward circle was apparant through the whole, otherwise it was not to be received; and that the 1. l. was of 12. ounces of fine Silver, and it was

assented unto that the King should have 6d. for the sealing of every Writ, and for the coynage of every pound of money 12.d. and no more of monies currant in the Realme.

The money is falsifyed by him who by evill covetousnesse maketh it not justifiable; and it is falsifyed by those who make it, and have not authority or warrant so to doe; It is also falsifyed by those who for evill gaine put more alay in it then of right there ought to be. And it is falsifyed by all those who make it without the Kings coynage. And it is also falsifyed by all those who by ill Art counterfeit it, and by those who clip or wash it for ill gaine.

CHAP. I.

SECT. 7.

Of Treason.

TReason is not done but betwixt Alies, who may be by Blood, Affinity, and Homage, Oath, and Service. By blood, as if one of Parentage doe any thing to another of his blood which is the cause of his death, or dis-inherison, or to losse of homage; for the quality of Treason is the taking away of life or member, or decrease of earthly Honour, or the increase of villanous shame. And in the same manner is this offence betwixt Affines, as betwixt Sisters, Sonnes in Law and Parents; for as cosinage is a line of divers

divers perceners discending of the same Stock, and drawne from carnall Copulation. In like manner Affinity is a neerenesse of Persons discending from carnall copulation where there is no blood; and as this Office is done betwixt Affines, and Cousens, so it is also betwixt Allies.

Alliance is sometimes by { *Service*, *Homage*, and *Oathes*.

Which happeneth sometimes by reason of Fealty issuing from the service of the Fee, sometimes issuing from the Oath of Service of the body, and as one of the Allies, Parents, or Affines commit this offence against the other, in the same manner may they doe against them.

By Service; as if one who I have rewarded, to doe me Fealty, and be seized in demeane of a Mannour or other gift, or service, or Courtesie, falsifie my Seale, or ravish my Daughter, or my Wife, or the Nurse, or the Ant of my Heire, or doth any thing which is the cause of my death by a Felonious compassing the same, or to the great dishonour or damage of my body, or of my goods, or discovereth my Counsell, or my Confession, which he is charged to conceale.

And by reward is meant, Fee Possession, Robe, Church, Rent, or other gift; and meat and drinke during the service.

And as such a one may commit Treason against me, who taketh from me so much that he is seized, in the same manner I may offend

offend against him, by such Action or demand he shall have against me, as I may have against him.

CHAP. I.
SECT. 8.
Of Burners.

BUrners are those who burne a City, Towne, House, Men, Beasts, or other Chattels, Felloniously, in time of peace for hatred or revenge. And if any one put a man into the fire, whereby he is burnt or blemished by the fire, although he be not killed with the fire, nevertheless it is an offence for which he shall dye. Under this offence sometimes fall those who threaten burning.

CHAP. I.
SECT. 9.
Of Man-slaughter.

MAn-slaughter is the killing of a man by a man; for if it be done by a beast, or by mischance it is not Man-slaughter.

This offence is two waies; either by the Tongue, or by the Act.

By the Tongue three waies; by Counsell, Commandement, or Deniall.

By

By Counſell, as he who counſelleth another to kill; and ſo alſo is it by Commandment.

By Denialls, as he who denieth ſuſtenance to a man.

By Act many waies; ſometimes by Striking, by Poiſoning, by Neceſſity, by Will.

By ſtriking, as it afterward appeareth in the Appeales.

By poiſon or venoming; as by ſecret felony, and fained friendſhip giving poiſon to another to eate, or poiſoneth or envenomed any thing, whereby a man is preſently or in time killed. Or by Impriſonment; as he who keepeth the body of a man in priſon by colour of Law, till he dyeth. By Chance; as by caſting, or drawing of a Veſſell, or other thing, and ſome one is killed by miſchance; or by the falling of a Tree, and other the like caſes. But you muſt diſtinguiſh where the killing is juſtifiable by Law, for there it is no offence; and when he doth not that which he ought to doe, and the party uſeth all the diligence which he may, crying out, and defending himſelfe, for then he doth not greatly offend; but he who doth not ſo doe, he offendeth mortally.

By neceſſity; wherein you ought to diſtinguiſh whether the neceſſity be avoidable or not, and if it be avoidable, it is a mortall offence.

By Will; and that may be either of himſelfe, or of ſome other perſon.

Of

Of himselfe; as in case when people hang themselves or hurt themselves, or otherwise kill themselves of their own felony.

Of others; as by beating, famine, or other punishment; in like cases, all are Man-slayers. Also this offence is done willingly; as by those who paine men so much as ought not, or not so much as they ought, he offendeth mortally. But it may be alleadged; that by reason of the paine the dead doth falsly confesse the Felony; and sometimes by the Reward of the Coroners or Justices are destroyed; and as it is of those who cast and leave Children and others who cannot goe in Deserts, or in such places and returne not to them though they doe now dye in the Deserts, God succouring them. And also false Jurours, and Witnesses are Men-slayers, and those who appeale others, or scandelously Indict them, or in other manner falsly accuse them.

And also they fall under this offence who Imprison the people in such places, or put them to such punishment, where it may be found by Enquest that by those meanes places or punishments they came sooner to their deaths.

Three waies was God himselfe killed; for Tongues killed him indeed, with the other who Crucified him, or procured him so to be; By the Tongue *Pilate* killed him, who Commanded him to be killed; By Will, the false witnesses, and all

all thoſe who conſented thereunto killed him; And hence it is that the Evangeliſts differ of the houre of his death, in ſetting forth his Paſſions.

This offence doth containe many branches:

viz. *Impriſonment,* *Mayheim,* *Wounding,* *Battery,* *Falſe Witneſſes.*

Impriſonment is the wrongfull detaining of a mans body, and that may be in two manners; either in a common Priſon of the King; or in a private Priſon which is forbidden.

In a common Priſon none ought to be put, if he be not attainted of an offence which requireth death; or eſpecially appealed, or indicted, and by Judgement of a falſe and wrongfull Impriſonment.

A privare Priſon is 1. ſometimes rightfull and juſtifiable; 2. wrongfull.

The ſame is lawfull and juſtifiable, when a man who is Baileable, is taken aud put in cuſtody till he hath found Baile to doe that which he ought.

People are in Cuſtody in divers manners; In one manner by the warrant of Law, as it is of Enfants within age, Women in the Cuſtody of their Husbands; men of Religion in the Cuſtody of the Abbots; or other Soveraignes of their houſes; and Villaines in the Cuſtody of their Lords.

In

In another manner people are in Cuſtody by Common aſſent; as it is of Idiots, of people waſters of their eſtates, of mad-men, and of thoſe who are drawne to follow infamous, though pardonable offences, who are to be in Cuſtody in ſuch Caſes.

Into the offence of Man-ſlaughter fall all thoſe by whom a man dyeth in Priſon; and that may be either by the Judge, who delayeth to doe Juſtice, or by dureneſſe of the Keepers, or by other unjuſtifiable occaſion.

Into this offence fall all thoſe through whoſe default people dye, being forſaken of thoſe who are bound to ſuſtaine them.

And thoſe who kill a man impriſoned, by a ſurcharge of paine, in caſe when any is adjudged to penance.

And all thoſe who unjuſtly adjudge a man to death; and thoſe who aſſent thereunto, and falſe Witneſſes who falſly teſtifie a mortall offence againſt an innocent man.

Into this offence fall all Jurours, and falſe Phiſitions, and maintainers of killing, and thoſe who beate or wound a man, ſo ſo that he is farre from living, and nearer to his death.

Mayhem is the want of member, or the enfeebling of it by breaking, or cutting the bones of a man, whereby he is leſſe able to combare.

And *Turgis* ſaith; That the loſſe of the fore-

fore-teeth is Mayhem, and of the turning of the mouth, and of the little finger, and of the right joynt; and the taking away the toes of the feet is Mayhem, and the more reaſon where more loſſe appeareth.

And *Sennall* ſaid; That the loſſe of the eyes is Mayhem, if nature have not taken them away; but the loſſe of the middle Teeth, or of the Noſe, or the Eares is not Mayhem, although the body are thereby reviled or diſhonoured.

And *Billing* ſaith; That Raſure by turning the bones of the Head, or of the Scull of the Head backwards is Mayhem, and alſo of other bones.

A wound is cauſe of death made by cutting of the hand, or the arme felloniouſly, which is ſhewed by the length, breadth, or depth; for the cutting of a ſtone, or of a ſtaffe ſeldome becometh a wounding but a bruiſing.

CHAP. I.

SECT. 10.

Of Larcines.

LArcine is the treacherouſly taking away from another moveables Corporeall, againſt the will of him to whom they doe belong, by evill getting of the Poſſeſſion, or the uſe of them. It is ſaid a taking, for bailing, or delivery is not in the Caſe; It is ſaid of moveables Corporiall, becauſe of goods not moueables, or not Corporialls

as

as of Land, Rent, Advowsons of Churches there can be no Larcine. It is said, Treacherously, because that if the taker of them away conceive the goods to be his owne, and that he may well take them, in such Case it is no offence. Nor in case where one conceives that it pleaseth the owner of the goods that he take them, but thereof there ought to be apparant presumption and evidence. There be two parts of Larcine.

One which is done openly in the day by Robbery. The other which is done in the night, or in the twilight.

Robery is done sometimes

By
1. *Theeves.*
2. *Tortious Distresses of Bayliffes and other, who wrongfully extort from the people.*
3. *Extruders and Disseisors who with force openly take the goods of others as before is said.*
4. *By others, who run away with other mens Wives, or Wards, and their goods.*

Into this offence fall all such who take the goods of others by Authority of the King, or of other great Lords, without the consent of those whose goods they are.

Larcine is committed sometimes by open Theeve, sometimes by Treacherous; as it is in divers kinds of Marchandizes, and as it is of Labourers who steale their labours; and as it is of Bailiffes, Receivers, and Administrators of others goods, who steale

ſteale them in not giving their Accompts.

Into this offence fall all thoſe who ſteale Purſes or Cloke-baggs, or doe any other Larcine by encreaſe or covetouſneſſe of themſelves, and all their favourers.

Into this offence fall all thoſe who ſuffer Theeves to paſſe when they may arreſt them; thoſe alſo who may take or hinder them, or warne them of malice and doe not; & thoſe who conceal them for love of Theef-boote; or other reward, or wittingly receive their Larcine, or their perſons.

Into this offence fall all thoſe who ſteale by falſe meaſures, and falſe weights, or in any other manner of treachery by colour of Merchandiſe, and thoſe who wittingly ſuffer them where they may hinder them.

Into this offence fall thoſe who wrongfully amerce the people with outragious Amercements, or outragiouſly afferre Amercements, or wrongfully condemne their Neighbours either in damages, or penalties; and thoſe who wrongfully detaine treaſure found, Wreck, Waiſe, or Eſtray which belongeth to the King; and thoſe who otherwiſe finde them and doe not reſtore them when they may, and know to whom they doe belong.

Into this offence fall all thoſe who take wrongfull or outragious Toſe in Markets, Cities, Boroughs, Townes, Mills, or elſewhere; and thoſe who take pavage, murage, chinniage, carriage, or other manner of Cuſtomes more then they ought to doe.

Into this offence fall thoſe Bailiffes who

doe enquire in Turnes and viewes of Franck-pledges of more Articles then of personall offences,& of wrongs done to the King and his Crown,and of wrongs done to the common people,& those who by extortion take monies or Fines for Beauplea-der, or for which the Jurours are not charged; and those who amerce any of their owne heads without reasonable affir-ment of the people sworne thereunto.

Into this offence fall those who unjustly distraine, and those who sell distresses for the King debt within the 15. daies.

Into this offence fall all those Officers of the Exchequer, and others who forbid to make Acquittances under the Exchequer Seale, to every one for so much as he hath paid; and who ofner then once cause a debt to be leavied; who to take Rewards, whereby the Townes doe not in due man-ner according to the Constitution of Win-chester; or who suffer that the people be not furnished with Armes, according to Common appointment.

Into this offence fallall stealers of others Venison, and of Fish in Ponds, and of Co-nies, Hares, Pheasants, Partriges being in Warrens,& otherfowl, Doves and Swans, of the Eires of all manner of birds.

Into this offence fall all the Sheriffs,Bai-liffes, and other the Kings Officers, who unjustifiable by extortions take money of the people, as for defaults unjustifiable, or for sheaves or other Custome unalow-able, or for Plea whereof the Judge hath

no jurisdictions; and those who take mony to put men out of Pannells of Juries, and put others in.

Into this offence fall all those who take Lands, Tenements, Horses, or other things, and use them beyond the appointed for the loane of them; and those who by the authority of their Bailiffes make unjustifiable Collections for monies, or other provisions, or Corne in Sheaves for Scortalls, or other Feastivalls, or doe to the people other unlawfull grievance in the like case. And those sworn Officers who cause Fines, or Amercements, or other manner of duty to be oftentimes leavied upon one man, without making restitution; and those officers who take of other then of the King, or of their Lords, to doe their Office; and those who oftner then twice in the yeere hold Sheriffes Turnes, or who oftner then once in the yeere hold views of Frankpledges in one Court; and those who by unjustifiable Articles amerce the people; and those who at Mills or Markets take outragious Tole, and those who amerce the people by Presentments not made by the whole Decenry, or by others then of Free-men.

Into this offence fall they who doe any thing upon another Inheritance by evill covetousnesse, or for hatred.

Into this offence fall Counters who take outragious Sallary, or not deserved, or who are attainted of ill defence, or of other discontinuance, and those who deny their

Seales in Judgement, and thoſe who make Contracts which are forbidden.

Into this offence fall Uſurers, who lend mony or other things, through covetouſneſſe to take the forfeiture. And thoſe who rob, or ſteale the Marriages of others, or run away with others Wives, or villaines with the goods of others.

And all Fore-ſtallers, by whom Victuals or Cattell are made deare.

They are Fore-ſtallers who within any Towne or Franchiſe buy to engroſſe, and unlawfully to ſell more deare; and thoſe Butchers who ſell unwholſome fleſh for wholſome; and thoſe Fiſh-mongers who buy and ſell againſt the eſtabliſhed Law; and all thoſe of what Myſteries ſoever they be, who doe deceitfully in their trade or Myſteries.

CHAP. I.

SECT. II.

Of Hamſockne, or Burglary.

BUrglary by an ancient Ordinance is a mortall offence; for the Law is, That every one be at peace in his owne houſe.

This offence is not done only by breaking of a houſe, but is alſo done by a felonious aſſault of Enemies in time of peace, upon thoſe who are in their houſes with intent to repoſe there in peace; whether the aſſault be to kill, or to rob, or to beat thoſe who are in reſt within their houſes. And although it be that theſe offenders doe not accompliſh their purpoſe, if nevertheleſſe they

they make any breaking by their aſſault of the doores, windowes, or walkes, to enter felloneouſly, they are guilty of this crime.

Into this offence fall all thoſe who felloniouſly force their entry into anothers houſe, and therein doe any violence againſt the peace, although they doe not break the houſe, and that as well in the day time as the night; and thoſe who diſſeiſe the people in ſuch caſe, or caſt them out of their houſes, and out of their peaceable poſſeſſions wrongfully.

CHAP. I.

SECT. 12.

RApe is done two waies, that is to ſay, of things, and of Women. This offence is here put becauſe King *E.* 1. by his Statute made it mortall, which is more grounded upon the will, then upon diſcretion; for one ſort is Whoredome, another Fornication, another Adultery, another Inceſt, and another Rape; but to ſpeake properly we are to diſtinguiſh of the offences, whereof the firſt offence is greater then the other.

Whoredome is the deflouring of a married woman felloniouſly.

Fornication is to raviſh women not Married.

Adultery is to raviſh anothers wife.

Inceſt is to raviſh Couſens, Parents, or Affines.

Rape is properly the taking away of a woman for the desire of Marriage.

Rape nevertheleſſe according to the meaning of the Statute is taken for one proper word, given for every enforcement of a woman, of what condition ſoever ſhe be.

CHAP. I.

Sect. 13.

Of the Office of the Coroners.

TO Coroners anciently were enjoyned the keeping of the Pleas of the Crown, which extend now but to Fellonies and Adventures.

There are 2 kinds of Coroners { *Generall* and *Speciall*

To the Office of generall Coroners it belongeth to receive the Appeales of all the County of Fellonies done within the yeere; to award the Exigents of Contempts, and to pronounce the Judgements of Out-lawries; and more, to enquire in what Pledge they were, or Decenery, or of whom Mainprized, and in whoſe Ward.

Speciall Coroners are Coroners of Liberties, and of priviledged places.

To the Office of the one and the other it doth belong, to view the Carcaſes of the dead by Felony, or by miſchance; or to ſee the burnings, and the wounds, and the other fellonies, that is to ſay, every one in his

his Bailiwick; and to ſee Treaſure torne and Wreaks of the ſea, and to take the acknowledgements of Felony, and to give the Abjuration to flyers to ſanctuary, and to take the Enqueſts of Felonies hapning within their Bailiwicks.

As to the view of the Carcaſe of the body of a man, it is his office that ſo ſoone as he ſhall be certified thereof, to ſend to the Hundred of the place to ſummon ſufficient able men of the next Townes, that at a ſhort day certainly named, they be before him at ſuch a place, all which done the Carcaſe is to be viewed; and if he finde it there buried, that it be taken up, and to the Coroner it belongeth to Record the names of them who buried him; and if it hath been decreaſed or endamaged by ill keeping, or laine ſo long that it cannot be judged how it came by its death, that the ſame alſo be Recorded, that this negligence be puniſhed at the comming of the King, or his Juſtices in Eyre into thoſe parts; and if the Coroner, with the advice of the people preſent be ab'e to judge of the death, then they are to preſent the manner of his killing, whether he dyed of anothers Felony, or of his owne, or by miſchance; and if of blowes, whether of a ſtaffe, or a ſtone, or a weapon; and the the Coroner is to Record in his Booke the names of thoſe who were ſummoned and appeared not, that the ſame offences of diſobedience remaine not unpuniſhed, whereby the Coroner could not at that

time doe his office for want of Jurours.

In thoſe Enqueſts lye no Exceptions, or Challenges to the Perſons of the Jurours; but he ought to make his Pannells of the diſcreeteſt, and of the ableſt and beſt of them, and to ſee that the Carcaſe be buried.

The Pannells are to be of Decenies; for Coroners at theſe Enqueſts, Sheriffes at their Turnes, Bailiffes at the viewes of Franck-pledges, Eſcheators and the Kings Officers of his Forreſts, have power by authority of their Office to ſend for the people, which none other have without the Kings Writ; and that is for the keeping of the peace, and for the right of the King, and for the common people.

The Articles are theſe.

YOu ſhall by your Oathes declare of the death of this man, whether he dyed of Felony, or by miſchance; and if of Felony, whether of his owne, or of anothers, and if by miſchance, whether by the Act of God, or of man; and if of Famine, whether of Poverty, or of common Peſtilence; and from whence he came, and who he was, and if he dyed of anothers Felony, who were Principalls, and who Acceſſours; and if Hue and Cry were duely made or not; and whether the men fled according to Law or not, and who threatned him of his life or members, and who were Sureties for the Peace; or whether he dyed of long Impriſonment, or of paine, and by whom he was farther from life, and neaver to his death; and ſo of all prevailing circumſtances that can come by preſumptions.

And

And in case where he dyed by hurt, or fall, or other chance by the Act of God, so that he had not power to speake before his death, then you shall tell the names of the finders, and of his next Neighbours, and who were his Parents, and if he were killed there or elsewhere, and if elsewhere, by whom, and how he was thence brought, and the value & kind of the Deodand, and to whose hands it came; for in case a man dyeth by a fall, in such case according to Randulfe de Glanvill, *it is Ordained, whatsoever is cause of his death is Deodand, as it is for whatsoever moveth in the thing whereof he fell, as Horse, Cart, Mill-stone, also Vessels are sometimes Deodands but not in the sea, the sunnes upon the Horses, the goods lying in Ships, Mills, Carts, and Houses, are not accounted for Deodands.*

And in case of anothers Felony, then the Jurours declare who were the Felons, in what Pledge, Dosten, Ward, or Mainepriz they were, and from whence they came, and where they returned.

And if he was killed by false Judgement, then that the Jewry declare who were the Judges, who the Officers to forme the Judgement, and who Accessories, and if of false Witnesses, who were they, and the Jurours.

And if he dyed of his owne Felony, then that they tell the manner, and the value of his goods, and the names of his Parents, and the Finders, and of the Neighbours, and the value of the waft.

There

There are nine manner of Accessories.

1 *Those who command.* 2 *Those who conceale* 3 *Those who allow and consent.* 4 *Those who see it.* 5 *Those who helpe.* 6 *Those who be partners in the gaine.* 7 *Those who knew thereof, and did not interupt or hinder it by forbidding.* 8 *Those who knowingly receive.* 9 *Those who are in the force.*

Of misadventures in Turnaments, in Courts and Lists, King *Henry* the 2. Ordained, that because at such Duells happen many mischances; That each of them take an Oath that he beareth no deadly hatred against the other, but onely that he endeavoureth with him in love to try his strength in those common places of Lists, and Duells, that he might the better know how to defend himselfe against his enemies; and therefore such mischances are not supposed Felony, nor the Coroners have not to doe with such mischances which happen in such common meetings, where there is no intent to commit any felony.

Coroners also ought to make their views of Sodomies, and of monstruous births of Children, who have nothing of humanity, or who have more of other Creatures then of man; and Coroners were to burie them. But the holy Faith doth more and more now daily confirme men, that they abstaine to commit these horrible sins which they used to do. Also they used to enquire of burnings, and who put to the fire, and how; and whether it were by felony or mischance; and

and if of felony, of whose felony, and who were the Principall, and who the Accessories, and who were the threatners thereof.

It belongeth to them at their viewes to enquire after Treasure privately hidden, and found in the ground, and how the Treasure was found, and by whom, and how much there was; and if it be all seised upon, or all carried away, and who carried it away, and how much; and who were the finders of it, and the next Neighbours.

At their viewes of Wrecks, they ought to enquire whether the Wreck came to Land, what be the things, and how much, and the value of them distinctly by parcels; and if a Man, Beast, Cat, or other living thing came with it or not; and that by Divident it be delivered to the next Towne, that they may answer the Lord if he come to claime it, & receive it within the yeere.

At his view of wounds, it behooveth him that he view the Wound, and make a Record of the length, breadth, and depth of it, in aide of the wounded if he complain, in case the wound be healed, the Coroner of the County may helpe him by the Record. Also it belongeth to them to view Burglaries, & to enquir of the names of the Felons, and what they have to live of, and from whence they came, or whether they returned; and of the Menasors, and of other Circumstances.

The Jurours are severed into doziens, so that one dozien speak not with another, but that every Jury answer by it self, and review the

the Presentments, and the Verdict, so are they chargeable, to accuse the Conspirators who procure to save any Offendant, or to indict an innocent in such Enquests.

All the Verdicts before the Coroners as well of Accessories as of the Principall are at the Commandment of the Coroners receiveable by the Sheriffes, and the Principall and Accessories are to be taken and delivered to Maine-prisors, and in the presence of them and of the Sheriffes their goods moveables and not moveables are to be seized into the Kings hands, and by a reasonable Extent and Divident, the moveables are deliverable for the finding of the Prisoners, and for their needful and reasonable sustinance, & the King to be answered the residue, saving the right both to the Principall if they be acquitted, and to the Accessories by Mainprise.

And if any one fly, or make resistance, and will not answer the Law, it is lawfull for every one to kill him, if he cannot otherwise apprehend him.

And *Bermund* awarded; That all goods of those that fled should remaine forfeit to the King, saving to every one his right, although that afterwards he yeeld himselfe to the Peace.

And *Iselgram* said; That he is no flyer who appeareth in Judgement before he be Our-lawed.

If any one fly to Sanctuary and there demand protection, we are to distinguish; for if he be a common Thiefe, Robber, Murderer,

derer, Night-walker, and be knowne for such a one, and discovered by the people, & of his Pledges and Deziners; or if any one be convict for Debt, or other offence upon his owne confession, and hath forjered the Realme, or hath been exiled, banished, Out-lawed or Weyved; or if any one have offended in Sanctuary, or joyned upon this hope to be defended in Sanctuary, they may take him out thence without any prejudice to the Franchise of Sanctuary. But in the right of Offenders, who by mischance fall into an offence mortall out of Sanctuary, and for true Repentance run to Monasteries, and commonly confesse themselves sorrowfull, and repent, such offenders being of good fame, if they require tuition of the Church, King *Hen.* 2. at *Clarendon* granted unto them, that they should be defended by the Church for the space of forty daies; and Ordained that the Townes should defend such flyers for the whole forty daies, and send them to the Coroner at the Coroners view. It is in the election of the offender to yeeld to the Law, or to acknowledge his offence to the Coroners, and to the people, and to waive the Law; and if he yeeld himselfe to be tryed by Law, he is to be sent to the Goale, and to waite for either acquittall or Condemnation; And if he confesse a mortall offence, and desire to depart the Realme, without desiring the tuition of the Church, he is to goe from the end of the Sanctuary ungirt in pure Sack-cloth,

and

and there sweare that he will keepe the straight way to such a Port, or such a passage which he hath chosen, and will stay in no parts two nights together, untill that for this mortall offence which he hath confessed in the hearing of the people he hath avoyded the Realme, never to returne during the Kings life without leave, so God him help, and the holy Evangelists; and afterwards let him take the signe of the Crosse and carry the same; and the same is as much as if he were in the protection of the Church.

And if any one remaine in Sanctuary above the forty daies, by so doing he is barred of the grant of Abjuration if the fault be in him, after which time it is not lawfull for any one to give him victuals.

And although such be out of the peace, and the protection of the King, yet none ought to dishearten them, all one as if they were in the protection of the Church, if they be not found out of the high way, or wilfully breake their Oathes, or doe other mischiefe in the high way.

If he who is killed be unknowne, in such case the Coroners ought to shew the murdered cloathes, according to the Statute of King *Kanute*, who Ordained for the safeguard of his *Danes* whom he left in *England*; That if a man unknowne were killed, that the whole Hundred should be amerced to the King by the Judgement of Murder. Four things excuse the Hundred from the Judgement of Murder.

1 If

1 If the Felon be knowne who killed him, for if the Felon be knowne, then may he be attainted of the Felony.

2 Another, If the Felon be apprehended, or if he fly to a Monaſtery.

3 If the killing come not by Felony, but by miſchance.

4 The fourth in caſe where a man is a felon of himſelf, and becauſe there could be no Murder of a man knowne, it belongeth to the Coroners to enquire in thoſe Felonies of what Kindred or Lineage thoſe that were killed were, ſo that one may know by their Parents whether they were of the *Engliſh* nation or not; for if no man could name their Parents, it was great preſumption that they were Alliens. And thence it is that one calleth that Parentage *Engliſhire*, where the Parentage be found of the Fathers or of the Mothers ſide; and if no *Engliſhire* be found, then that it hath the Judgement of Murder.

To the Office of the Coroners it alſo belongeth to receive the confeſſion of Felons in the hearing of Witneſſes, whereby of a grand Felony done by many offenders it came to paſſe in the time of King *John*, that one of the offenders petitioned the King, That he would pardon him his life, for that he had accuſed the other offenders who were his companions, and that the King Out-lawed them; and at the requeſt of the King the Earles granted, That in Sanctuaries only it ſhould remaine for Law, that offenders having confeſſed the Felony might

might accuse others; and that it was then Ordained; That the Coroners should take such Confessions, and such Appeales but once, and not many times.

Women are not admitted to bring Appeales, nor Infants within the Age of 21. yeeres, no Idiots, nor men professors, nor Clerks indicted or appealed of any Crime, nor men attainted of false Appeale, nor those who are vanquished in battaile, but those who have government of themselves.

The Appelees are to be seised upon body and goods twice in the yeere, that is to say, once after Michaelmas, and another time after Easter, And because Sheriffes to doe the same make their Turnes of the Hundred, such visnes are called the Sheriffes Turnes, where it belongeth to the Sheriffe to enquire of all personall Offences, and of all the circumstances of Offences done within the Hundred; and of the wrongs of the King and Queens Officers, and of wrong done to the King and the Common people, according to the Articles aforesaid in the division of Offences.

The Appeales are to be seised upon body and goods as afore is said; and if any Forrainer be appealed who is out of the power of the Coroner, the Kings Commissary is to cause him to appeare, or Outlaw him.

CHAP. 1

CHAP. I.

SECT. 14.

Of the Exchequer.

THe Exchequer is a place which was Ordained onely for the Kings Revenew, where two Knights, two Clerkes, and two learned men in the Law are assigned to heare and determine wrongs one to the King and Crowne in right of his Fees, and the Franchises, and the Accompts of Bayliffes, and Receivers of the Kings Monies, and of the Administrators of his Goods, by the over-sight of one Chiefe who is the Treasurer of *England*.

The two Knights usually called two Barons, were for to afferre the Amercements of Earls, Barons, and of the Tenants of Earldomes and Baronies, so that none be amerced but by his Peers.

To this place there was a Seale assigned, with a Keeper of it, to make Acquittances upon every payment to those who desired them, and to seale Writs and Escheates under green Wax issuing from thence for the Kings Revenue.

In this place there are also Chamberlaines and many other Officers, who belong not very much to the Law.

CHAP. I.

SECT. 15.

Of inferiour Courts.

FRom the first Assemblies came Consistories which we now call Courts, and that in divers places, and in divers manners; whereof the Sheriffes held one Monethly, or every five weeks according to the greatnesse or largenesse of the Shires. And these Courts are called County-Courts, where the Judgement is by the Suiters if there be no Writ, and is by warrant of Jurisdiction ordinary. The other inferiour Courts are the Courts of every Lord of the Fee, to the likenesse of Hundred Courts; and also in Fayres and Markets, where right is to be ministred without delay, whether the matter concern the Plaintiffe or Defendant, according to the first Ordinances; in which Courts they have counsans of Debts, Covenants broken, and of Trespasses, and of such small things which passe not forty shillings value; and also they have Counsans of Trespasses, and forfeitures of the Fees betwixt the Lords Plaintiffes, and the Tenants Defendants, *Et è contra.*

There are other inferiour Courts which the Bayliffes hold in every Hundred, from three weekes to three weekes by the Suters of the Free-holders of the Hundred. All the Tenants within the Fees are bound-

den

den to doe their Suit there, and that not for the ſervice of their Perſons, but for ſervice of their Fees.

But Women, Infants within the age of 21. yeeres, deafe, dumb, idiots; thoſe who are Indicted or Appealed of any mortall Felony before they be acquitted, diſeaſed perſons, and excommunicated perſons are exempted from doing Suit, and although it be that ſuch Free-holders may doe Suits at inferiour Courts by their Attornies, nevertheleſſe the Judgement is not to be given or holden for forraign; and if any Plea be removed by Writ of Juſtities, Replegiarie, waſt, or of other nature, that enable the Juriſdiction from which the Writ is originally ſent, and returneable.

CHAP. I.
SECT. 16.

Of the Sheriffes Turnes.

THe Sheriffes by ancient Ordinances hold ſeverall meetings twice in the yeere in every Hundred, where all the Free-holders within the Hundred are bound to appeare for the ſervice of their Fees; that is to ſay, once after Michaelmas, and another time after Eaſter; and becauſe Sheriffes to doe this make their Turne; of Hundreds, ſuch appearances are called the Sheriffes Turnes, where it belongeth to Sheriffes to enquire of all per-

sonall offences, and of all their Circumstances done within those Hundreds, and of all wrongs done by the King and Queens Officers, and of wrongs done to the King, and to the common people, according to the points aforesaid in the division of offences.

All Free-holders within the Hundred are not bounden to appeare at these Courts, for King *Hen.* 3. excused some persons, & said; That it was not needfull that Arch-Bishops, Bishops, Abbots, Priors, Earls, Barons, religious Persons, nay such people, nor other who were exempted to doe Suit at inferiour Courts should appeare in proper person, if their appearance were not necessary for some other cause then onely to make their appearance. And if any one hath divers Tenements in divers Hundreds, his presence is not to be excused notwithstanding the Kings grant.

CHAP. I.

SECT. 17.

Of viewes of Franck-pledges.

OF these first Assemblies it was also Ordained; That every Hundred doe make a common meeting once in the yeere, not onely of the Free-holders, but of all Persons within the Hundred, Strangers and Denizens of the age of 12. yeeres and upwards, except of Arch-Bishops, Bishops, Abbots, Priors, religious Persons, and

and all Clerkes, Earls, Barons, and Knights, Feme Coverts, Deafe, Dumb, Sick, Idiots, infected Perſons, and thoſe who are not in any Dozien, to enquire of the points aforeſaid, and of the Articles following, and not by villanies, nor by women, but by the afferment of Free-men at the leaſt; for a Villaine cannot indict a Free-man, nor any other who is not receiveable to doe Suite in inferiour Courts, and therefore it was anciently Ordained; that none ſhould remaine in the Realme if he were not in ſome Decenny, and pledge of Free-men; it belongeth alſo to Hundredours once a yeare to ſhew the Franck-pledges, and the Pledgers, and therefore are the Viewes called the View of Franck-pledges.

The Articles are theſe.

BY the Oathes you have taken, you ſhall declare whether all they who ought, doe appeare or not.

If all the Free-men of the Hundred, or of the Fees be preſent.

If all the Franck-pledges have their doziens entire, and all thoſe who they have in pledge.

If all thoſe of the Hundred, or of the Fees of the age of 12. yeeres and above, have ſworn fealty to the King, and of the receivers of others wittingly.

Of all Bloud-ſheds, of Hue and Cry wrongfully leavied, or rightfully leavied and not duely purſued, and of the names of the Purſuers; of all mortall offences, and of their kinds, and as well of the Principalls as of the Acceſſories.

Of all Exiles, Out-lawes, Waives, and baniſhed

shed Persons returned, and who have since received them, and of those who have been judged to death, or abjured the Realm.

Of Usurers, and of all their goods.

Of Treasure trove, Wrecks, Waifes, Estreyes, and of every purpresture and encreachment upon the King, or upon his Dignity.

Of all wrongs done by the Kings Officers and others to the common people, and of all purpresures in common places, in the Land, or in the Water, or elsewhere.

Of Boundaries removed to the common Nusance of the people.

Of every breach of the Assize of Breed, Bear, Wine, Clothes, Weights, Measures, Beames, Bushels, Gallons, Ells, and Yards, and of all false Scales, and of those who have used them.

And of those who have bought by one kind of measure, and sold by another kind in deceit of Merchants, or buyers.

Of the disturbers of framing lawfull Judgements, and of the framers of wrongfull Judgements, and of the Abbettors, and consenters thereunto.

Of every wrongfull detinue of the body of a man, or other distresse.

Of every false Judgement given by the View in the other Hundred, or in the Fee.

Of every Fore-stallment done in the common High-way.

Of wrongfull Replevies, and wrongfull Recousses.

Of every outragious Distresse in another Fee, or in the Market for a forraign contract.

Of all Bridges broken, and Causies, wayes, common

common Bridges, and who ought for to repaire them.

Of the makers of Cloathes dwelling out of great Towns in places forbidden.

Of Tanners and Curriers of Leather.

Of Butchers, and who ſell unwholſome fleſh for that which is ſound; and of all thoſe who ſell corrupt Wine for ſound Wine; or Beere, Ale raw and not well brewed, for that which is good and wholſome.

Of ſmall Lavines.

Of cutters of Purſes.

And of thoſe who ſuffer people to uſe any Myſterie for reward or Fee.

Of Receivers of Thief-boot.

Of makers and haunters of falſe Dice.

Of outragious Tole-takers, and of all other deceivers.

Of all manner of Conſpirators.

And of all other Articles availeable for the deſtruction of offenders.

And the Preſentments are to be ſealed with the Seales of the Jurours, ſo that none by fraud doe increaſe or diminiſh them; and that which cannot be redreſſed there by theſe Preſentments, is preſentable at the Sheriffes firſt Turne; and thoſe things which the Sheriffes cannot redreſſe are to be preſented by the Sheriffes into the Exchequer.

All thoſe who are Preſented for any offence which is mortall, and baniſhed Perſons who are returned, and their receivers, and thoſe who are not in allegiance under the King are to be ſeiſed upon, and their goods to be ſeiſed into the Kings hands.

And although it be ſo that the Bailiffe can not heare and determine any Action at the Leete, nevertheleſſe if any one preſent be grieved by any wrongfull Preſentment, and complain thereof; or if the Bayliffe or Steward have a ſuſpition that the Jurours be in ſome caſe perjured by concealing of any offence which is Preſentable, or of any offender; It is lawfull for the Bayliffes (or Stewards) by twelve more diſcreet men, to enquire of the truth thereof without delay; and although that the laſt Jurours ſay that the firſt are perjured, nevertheleſſe becauſe that no Decenery or Jurour is not atteſtable with leſſe then two Juryes; and becauſe the latter Jurie is not taken but ex officio of the Bayliffe, and not in the nature of an Attaint, the firſt Jurours are not to be taken Attainted, but are onely to be amerced.

And if any one profer himſelfe to ſweare fealty to the King, he is firſt to be pledged in ſome Franck-pledge and put in the Decenery, and afterwards ſworne to the King, and then he is forbidden to offend and common with offenders, and he is to be enjoyned to be obedient to his chiefe pledge.

And to take this Oath in thoſe Views is none exempted who is paſt the age of 21. yeeres, man or woman, Clerke nor Lay-man, except Alliens, Strangers, Meſſengers, or Merchants, and thoſe who are in cuſtody.

At theſe Viewes of Turnes, and viewes of Franck-pledges Eſſoignes hold, where the abſence of thoſe who cannot be there is excuſable, and ſuch Eſſoignes are adjournable to the next Courts following, that the Eſſoigners have their Warrants.

The

The Contents of the Second Chapter.

Of Actions.
Of Judges.
Of Plaintiffes.
Of Rewards or Fees.
Of Pleaders or Countees.
Of Attachments.
Appeales, and to whom Appeale is given.
Of Goales and Goalers.
Of Bayles in Appeales.
Of the Appeale of Majesty.
Appeale of falsifying.
Of Appeales of Treason.
Of Appeales of burning.
Of the Appeales of murder.
Of the Appeales of Robbery and Larcine.
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Of reall offences at the Kings Suit.
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Of

Of villinage and Neifitie.
Of Summons.
Of Essoignes.
Of Attornies.

CHAP. II.

SECT I.

Of Actions.

WHen it is said that Kings and Princes have the Government and Correction of Offenders, with aide of the Prelates; and to that intent they are Gods Vicegerants on Earth, and to doe the same they have Jurisdiction over the offenders by paines, and cheifly those offenders which are under their Jurisdiction; nevertheleſſe Kings cannot nor ought not to take notice of the offences of others without Actions of Accusers, which well appeareth by the example which God shewed when he was in his Consistory, and demanded who was the Accuser of the woman-sinner; and because none presented himselfe an Accuser against her, to give us a perpetuall example that right Judgement cannot be given without there be three persons at the least, *viz.* a Judge, a Plain-

Plaintiffe, and a Defendant, God said to the woman-ſinner, That ſhe ſhould goe in peace or quiet, ſince it belongeth not to a Judge, to be both Judge, and Plaintiffe; and therefore it behooveth to ſpeake of Actions, and who are and may be Judges, and who Plaintiffes, and who Defendants.

An Action is nothing elſe but a lawfull demand of right, and there are three manner of Actions which have their Introductions by Writs, and by Plaints in manner as followeth, *viz.* Perſonall, Reall, and Mixt.

CHAP. II.
SECT. 2.

Of Judges.

ALthoſe who are not forbidden by Law may be Judges. To women it is forbidden by Law that they be Judges; and thence it is, that feme Coverts are exempted to doe Suit in inferiour Courts. On the other part, a villaine cannot be a Judge by reaſon of the two eſtates which are repugnants; Perſons attainted of falſe Judgement cannot be Judges, nor Infants, nor any under the age of 21. yeares, nor infected perſons, nor Ideots, nor mad-men, nor deafe, nor dumbe, nor parties in the Pleas, nor men excommunicated by the Biſhop, nor criminall perſons; for God when

when he was upon Earth entred into the Consistory where a sinner was to be judged to death, when God wrote upon the ground, and said to the Saiters who came to judge her, *Who of you is without sinne?* and there gave a Judgement as an example to Judges, who take upon them every day to Iudge the people, whereby he taught them, That none should take upon themselves so high and noble a calling, as to sit in the Seate of God to Iudge offenders, when they themselves are guilty and Condemnable.

And those who are not of the Christian Faith cannot be Iudges, nor those who are out of the King's Allegiance; next, those who have no Commission from the King cannot be Iudges, nor none whose Authority is repealed, nor any one after Iudgement is given in the Cause; an example thereof appeareth in the Writ of Right, *Ennisi feceris, vicecomes faciat*; nor none after death, or the Returne; none whose warrant is vitious, not any one if his superiour will not have him. A Iudge Commissary hath not power to Iudge but according to the points, and within the words of his Commission, and the originall Writ, no more then the Arbitrary Iudge hath power to goe beyond the points of his submission.

CHAP.

CHAP. 2.
SECT. 3.

PLaintiffes are those who pursue their right against others by plaint.

All may be Accusers or Plaintiffes who are not forbidden by the Law.

Infected Persons, Idiots, Infants within age cannot accuse, or be Plaintiffes without their Guardians, nor Criminall Persons, nor an Our-lawed; exiled or banished Person, nor a woman wayve, nor a villaine without his Lord, nor a Feme Covert without her Husband, nor religious Persons without their Soveraignes, nor Persons Excommunicate, nor deafe, nor dumbe Persons without their Guardians, nor the Iudges of the Cases whereof they are Iudges, nor any one who is not of the Kings Allegiance, so as he hath been more then forty daies within the Realme, except Approvers who are suffered to accuse criminally people of his own condition in favour of the peace.

How lawfull men ought to complaine.

They ought in friendly manner to shew their offenders, that is to say, their Trespassours that they reconcile or amend themselves towards them; and if they will not doe so, and the Cause be Criminall, then yee are to distinguish, for if any one seeke revenge, then it behoveth him to bring his Action by Appeale of Felony, and if he seeketh only reparation of damages,

mages, then he behoveth to bring his Action by Writ which is to containe the name of the King, and of the Parties, and the name of the Judge, and of the County, and the Plaint in the demand, if the damages or the demand exceed forty shillings; and if not, then a Plaint sufficeth without a Writ. And because all Suites of the Plaintiffes could not be determined upon the first preferring of the Suits, nor the Suiters or Plaintiffes presently releeved in their Suits. Therefore Kings used to goe from County to County every seaven yeeres, to enquire of Offences and Trespasses, and of wrongs done to themselves and to the Crowne, and to the Common people; and of all wrongs, errours, and negligences of their Officers, and of all false Judgements; of paines pardoned or wrongfully Iudged, or outragiously; of Out-lawes returned, and of their Receivers, of the valewes of Counties out of Hundreds, Townes, Manners, and of moveable goods which belong to the King, and to the Crowne; of the Lands of Idiots, of alienators of Fees, of offences against the Kings Inhibition, of Priviledges and Franchises prejudiciall to the King; of Bridges and High-waies, and of all other needfull Articles; and they used to doe right to all Persons by themselves, or by their Chiefe Justices; and now Kings doe the same by the Iustices Commissaries in Eyre, assigned to hold all Pleas.

In aide of such Eyres are Sheriff, Turnes needfull,

needfull, and viewes of Franck-pledges, and when the people by ſuch Enqueſts were indicted of any mortall offence, the King uſed to Condemne them without Anſwers, which uſage ſtill remaineth in *Almaine*; but of pitty and mercy, and becauſe that man by reaſon of his frailty cannot keepe himſelfe from ſinne (if he abſtaine not from it by the Grace of God) it was accorded that no Appe'lee or Indicter ſhould be condemned without anſwer. And Kings had no Juriſdiction but of mortall offences, and of the rights of the Crowne, and of their owne rights, and of the wrongs of their Miniſters, and of wrongs done againſt Common Law, and Common Ordinances, and the Articles of Eyres.

CHAP. 2.
SECT. 4.

Of Rewards and Fees.

KIngs uſed to give Rewards to the cheife of the Stock, and to all thoſe who faithfully ſerved them; and from the Rewards of Kings others tooke example to reward their ſervants; and becauſe no Free-man was bouden to ſerve againſt his will, by reaſon whereof none were bound to ſerve the King or any other but by the ſervice of his Fee, or by reaſon of his Reſidence or dwelling in another Fee; ſome are bound to ſerve the King for a certainty by

by the yeare. And it is not lawfull for those Officers who take wages certaine of the King, to take any wages of the people.

But the Iudges who serve the King, it is lawfull for them to take twelve pence of the Plaintiffe after the hearing of the Cause and no more, although there be two Iudges, or two Plaintiffes in one Action: and the Pleader six pence, and a Knight sworne a witnesse foure pence, and every Iurour foure pence, and the two Sumners foure pence.

Nevertheless in the time of King *Henry* the 1. It was Ordained and assented unto; That Iurours sworne upon Enquests of Office, as in Assizes, Recognisances of Assizes, Redisseisins, Certificates of Assize, and Attaints, and other the like should not take Fees because they did the same *Ex officio*; and to answer these monies, and the damages are the Defendants chargeable, if Iudgement be given against them.

And to those who followed any Suit for the Kings profit, and were not any of his Ministers, King *Henry* the 1. gave to them the twentieth part of the profit with their reasonable Costs. In like manner the Iudge was not to heare the Plaintiffes Cause if he put not in security to answer his Adversaries damages, if he complaine of him wrongfully.

CHAP.

CHAP. II.

SECT. 5.

Of Countorr or Plaaders.

THere are many who know not how to defend their Cauſes in Iudgement, and there are many who doe, and therefore Pleaders are neceſſary, ſo that that which the Plaintiffes, or Actors cannot, or know not how to do by themſelves, they may doe by their Serjeants, Atturnies, or friends.

Countors are Serjeants skilfull in the Lawes of the Realme, who ſerve the common people to declare and defend Actions in Iudgement, for thoſe who have need of them for their fees

Every Pleader of others Cauſes ought to have a regard to foure things. 1. That there be a perſon receiveable in Iudgement, that he be no Heretique, Excommunicate Perſon, nor Criminall, nor a man of Religion nor a woman, nor within the Orders of a Subdeacon, nor a Benificed Clerke who hath cure of Soules, nor under the age of 21. yeares, nor Iudge in the ſame Cauſe, nor attainted of falſity in his place.

2 Another thing is; That every Countor is chargeable by Oath that he ſhall doe no wrong nor falſity contrary to his knowledge, but ſhall plead for his Cliant the beſt he can according to his underſtanding.

3 The third thing is, that he put no false Dilatories into Court, nor false Witnesses, nor move or offer any false corruptions, deceits, leasings, or false lyes, nor consent to any such, but truly maintaine his Clyents cause, so that it faile not by any negligence or default in him, nor by any threatning, hurt, or villany disturbe the Judge, Plaintiffe, Serjeant, or any other in Court, whereby he hinder the right, or the hearing of the Cause.

4 The fourth thing is as his Sallery, concerning which four things are to be regarded; 1. The greatnesse of the Cause. 2. The paines of the Serjeant. 3. His worth, as his Learning, eloquence, and gifts. 4 The usage of the Court.

A Pleader is suspendable when he is attainted to have received fees of two Adversaries in one Cause; and if he say or doe any thing in dispite or contempt of the Court; and if he fall under any of the points aforesaid, besides the exceptions which are to the person of the Pleader; for no man can be a Pleader who cannot be a Plaintiffe or Actor.

CHAP. II.

SECT. 6.

Of Attachments.

PErsonall Actions have their Introductions by Attachments of the body; reall

reall by Summons and mixt Actions; first, by Summons, and afterwards by Attachments.

The Law requireth that offenders in case of death have not such mittigation or favour that they be brought or summoned, or distreined to appeare in Judgement by taking of their Cattell if the offenders be knowne, and notorious, and the Plaintiffe pursue them so soone as he may. And if any one fly for such offence, then according to the Statute of Winchester he was to be followed with Hue and Cry, with Horne and Voyce, so that all those of one Towne who can are to follow the Felon to the next Towne; and if any such Felon be attaint and convict of the felony, let him be killed if he cannot be otherwise apprehended. But it is otherwise in felonies not knowne, for it is not lawfull to kill the offender without his Answer, if he may be taken alive.

And if any one would complaine to have revenge, or to drive the offender to the salvation of his Soule; let him goe to the Coroner of the place where the offence was done, and set forth his complaint there as he will prove it, and the Coroner is to cause the same to be distinctly enrolled; and if he cause him to record it as murder, being corrupted to destroy his Neighbour by his plaint; so that he have Judgement; the like is to be done to him if he prove not his plaint.

At the next Court after the Appeale is enrolled it belongeth to such Plaintiffes to

recite their Appeales, and to finde Sureties to purſue them, or to remaine in Priſon till they have found Baile; and to the Maine-priſors ſuch Plaints are to be deſivered by Coroners body for body, that they ſhall purſue their Appelees, and to cauſe them to appeare in Court to receive Juſtice when they ſhall be demanded, if they doe not prove their Appeales.

The Perſonall offences are theſe:

Impriſonment.
Mayhem.
Wounding.
Battery.
Perjury.
Uſury.
Reſcuſſes.
Foreſtallings.
Breaking of Parkes.
Reſiſtance of framing lawfull Judgements.
Executions of falſe Judgements, and all wrongfull offences.
Carrying away of Treaſure trove, of Wrecks, Waife, Eſtrayes.

The Attachments of mortall offenders are by their bodies without Sureties, and the Attachments of veniall Perſonall offenders are alſo by their bodies, but yet they are baileable.

Reall offences are thoſe upon which are grounded Writs of right, of Coſinage, of Dower, of right of Advowſon, of Entre, of Eſcheate, Writs of *Quo jure*, of Formedon, and of all Writs, feodalls.

Mixt offences are thoſe upon which theſe

these Writs are framed, *viz.* of Customes and Services, of Villinage, of Covenant, of Homage, of rendring Distresses, of Mesne and other Acquittances, of Escheates, and the like, and by reason of the mixture of their Introductions, they are called Mixt.

CHAP. II.
Sect. 7.

Appeales, and to whom Appeale is given.

THe Action of Appeale is not given to all alike, but every one is allowed to have his Action of Trespasse, to whom any Trespasse is done, except such as cannot have any Action at all.

Every one may have an Appeale of Burning to whom the damage is done, and the property of the thing burnt doth belong.

Parents, Kinred, and Allies used to be admitted to bring Appeales of Murder; but the Appeale of the Wife of the killing of her Husband is to be received before all other, and yet not of all his Wives, but of her onely who lyeth betwixt the Armes, which is as much as to say in whose seisage he was murdered; for if he had many Wives, and all were alive at the time of his murder; nevertheless she only is admitted to bring the Appeales of all the rest whom he last tooke to be his Wife, although in right she be not his Wife;

and the reason thereof is because it belongeth not to the Temporall Court to try, which was his Wife of right, and which in Fact; and the Appeales of all other are to be suspended, the pendant the same Appeale brought.

After the Appeale of the Wife is the Appeale of the Sonne lawfully begotten, of the murder of his Father to be received before all other, it is (said lawfully begotten) because a Bastard is not to be accounted amongst Sons, for the Common Law only taketh him to be a Sonne whom the Marriage proveth to be so.

After the Appeale of the eldest Son, the Appeale of the next of blood is used to be received, and so from one degree to another in the right Line of Cosinage; and if the blood faile in that Line, then they of the Collaterall Line are admitted to bring the Appeale; or the Kinred where the blood faileth, according to the degrees of Consanguinity and Affinity, and especially in the Line of the Fathers side; but the Appeales of Murder were restrained by King *Henry* the 1. to the foure next degrees of blood.

And if any one within the age of 21. yeares doe bring an Appeale, the Defendant is not bound to answer so high an Action untill he hath passed that age; and therefore such Appeales are to be suspended till both the Parties be of full age, if exception in the case be taken to the Nonage.

Men and Women, Clerkes and Laymen,

men, Infants and others of what condition ſoever they be may bring Appeales, except thoſe who are not ſuffered to bring any Actions; and although it be that many doe bring Appeales, yet one nevertheleſſe is admitted to continue, and pendant that, all the others are to be ſuſpended. And in all Caſes the Appeales againſt the Acceſſories are to be ſuſpended pendant, the Appeale againſt the Principall, be it one or many.

CHAP. II.
SECT. 8.

Of Proceſſe of Exigent in Appeales.

AT the firſt County the Coroner is to doe no more but to enter the Pledges, who properly are Main-priſors, and to Command that ſuch take the Appeales, and ſeize all their Poſſeſſions and their goods into the Kings hands, as before is ſaid; and if they be taken, that they be kept till due deliverance be of them, and if they be not to be found; and the Plaintiffe come at another County, and recite his Appeale or Appeales, then are ſuch Appelees demandable only by their names, and by ſuch names as they are beſt knowne by, that they appeare to Anſwer the Kings Peace; for if any one be Appealed as Son of the Father, and is knowne by another Sir-name, the Appeale is inſufficient,

ent, and by consequence abatable at the perill of the Plaintiffe; and at the third County they are to be demanded in like manner as before; at which County Court if the Appelees appeare not, nor are taken into Main-prise to appear at the next Court, Judgement is to be given against them for their contempt by the Coroners; and those who doe appeare before Judgement of the Coroner, are presently to be delivered over to the Goale, where they are to be received without difficulty of Fine, or request.

CHAP. II.

SECT. 9.

Of Goales and Goalers.

A Goale is nothing else but a common Prison, and as a Leper, or a man who hath a diseased body is not to be suffered to dwell or remaine amongst men who are sound; so mortall sinne is a kind of Leprosie, which maketh the Soule abhominable unto God, and therefore such mortall sinners or offenders ought to be separated from the society of the people. And to the end that Innocents be not infected with their offences, Goales were Ordained in every County to keepe such mortall offenders in, there to remaine till Iudgement were given against them in case the offences were notorious.

There

There are 2 kinds of Prisons { *Common* and *Private.*

Every common Prison is a Goale, and none hath a Goale but the King only.

A private Prison is another Prison, from whence every one may escape who can, so as he doe no other Trespasse in the escape. None are imprisoned in a common Prison but for a mortall offence, and therefore it was forbidden by King *Henry* the 3. That none should leavy money for any escape in the Land, if the escape were not adjudged before the Iustices in Eyre, whether for the same a Corporall or a pecuniary Punishment were awardable or not; and because it is forbidden that none be pained before Iudgement, the Law requireth, That none be put amongst vermine, or in any horrible nor dangerous place, nor into any other paine; but it is lawfull for Goalers to fetter those they doubt, so as the Fetters weigh no more then 12. ounces; and to enable the keeping of those in the Goale who are violent, outragious, or doe other Trespasse there.

CHAP. II.

SECT. 10.

Of People Bayleable in Appeales.

SOme Appeales of mortall offences, although they are not bayleable by Law, nevertheless

nevertheleſſe they are ſuffered to be bayled when they are brought into the Goale; as namely, the Appeales of Murder, Robbery, Burglary, Larcine; or out of Priſon, where it is found that they are wrongfully Appealed, and for ſuch caſe was the Writ *De odio & accia* invented.

Thoſe who are condemned to have Corporall puniſhment are not to be Bayled; but it is otherwiſe of thoſe who are impriſoned for a Fine, or any other pecuniary penalty or puniſhment.

CHAP. II.

SECT. II.

Of the Appeale of Maieſty.

OF the Crimes of Majeſty, nor of falſifying, nor of any thing which concerneth the Kings right, there lyeth no Appeale, but Actions, or Indictments.

For ſlanders of Sodomy, our ancient Fathers would never agree thus for the ſcandalls of ſo doing, that any one ſhould bring Actions by way of Accuſation, nor Indictments, nor would ever aſſent that they ſhould be heard of in regard of the abominableneſſe of the ſinne; but they Ordained, that ſuch notorious ſinners ſhould be forthwith Iudged, and Iudgements framed againſt them.

Of the imagining of the Kings death, and of other kind of offences of Majeſty againſt an earthly King, there were Accuſations

sations but for Indictments; for every true Subject was with all expedition to shew the same to the King, so that he be not taken or seised upon by his long stay, or by great delay, in what cases the Accusations are to be received; and in full Parliament let the Accuser by himselfe, or by a Serjeant doe it, according as it was done in this case in the time of King *Edmond* in these words.

Rocelyn here saith against *Walligrot*; That at such a day, in such a yeare of the Raigne of such a King, into such a place came the said *Walligrot* to this *Rocelyn*, and found him to be in Counsell, and in assistance with *Arheling*, *Turkille*, *Ballard*, and others, to Arrest, or to make Prisoner, or to kill our Lord King *Edmond*, and to doe the same they were sworne to keepe Counsell, and to commit this Felony according to their power.

CHAP. II.

SECT. 12.

Appeale of Falsifying.

THis offence is not openly done, it is seene by a false Writ, or false money found in ones possession, and although that three Persons are necessary in Iudgement in this case, nevertheleſſe it is Ordained; That the possessour of ill things be by the Iudge *Ex officio* driven to answer to the

the Title of their Poſſeſſion thereof, which is not ſo in all Caſes.

And if there be any one who will not plead to Jugdement, then he is to be returned to the Goale, and all his goods are to be ſeiſed into the Kings hands, and to be ſeiſed upon as in all Criminall Actions brought by Appeales or Indictments; alſo in veniall Actions ſuch contumacies uſed to be condemned for not pleading, as by their pleading and lawfull Attainder.

And if any one ſaith that he came to the money lawfully, and doth not know by whom, nor none offer themſelves againſt him to prove the affirmative of the Action; then it belongeth to the poſſeſſour of the money to prove the affirmative of his Anſwer.

And if any one ſaith, that it came to him from a man certaine, let it be as after herein is ſaid.

CHAP. II.
SECT. 13.

Of Appeales of Treaſon.

TReaſon is ſet forth in Appeales in this manner, according as it is found in the Rolls in the time of King *Alfred.*

Bardulf here doth appeale *Dirling* there for that, that in as much as this ſame *Dirling* was the Allie of the ſame *Bardulf*, the ſaid *Dirling* came ſuch a day of the yeare,

yeare, &c. and during the Alliance raviſhed the Wife of the ſame *Bardulf*, or counterfeited his Seale; or did him ſome other miſchiefe. Or thus; *Hakenſon*, Father, or other Parent, or Lord, or Allie, this *Dirling* killed; or thus, remained in Aide, and in Counſell with *Daffray*, the adverſary of the this *Bardulf* in ſpeech which touched the loſſe of his life, or members, or of his earthly Honour; or thus, diſcovered his Counſell or his Confeſſion; or thus, whereas he ought to have a lawfull enrolement according to Law of ſuch a Plea, the ſame *Dirling* falſly enrolled the ſame to his diſ-inheriſon, or otherwiſe to his damage; or thus, whereas he was his Atturney in ſuch a Plea, before ſuch Judges to gaine or loſe, and ſhould have done him right, he loſt by his default, or by his folly, negligence, or colluſion, or reſtored the thing in demand, or did him ſuch hurt. Or thus; whereas he ſhould have excuſed him, or eſſoigned him ſuch a day, &c he ſuffered him to loſe the Poſſeſſion, or ſuch other thing through his default; or thus; whereas he ought to have truly ſpoken for him in ſuch a Caſe, the ſaid *Dirling* did ill adviſe him, or ſpeake againſt him in ſuch a Point; and afterwards thus, this Treaſon did the ſaid *Dirling* felonicuſly as a Felon, and traiterouſly as a Traitor, and if he will deny it, *Bardulf* is ready to prove it upon him by his body; or as a mayhened man, or a woman, or a Clerk ought to prove.

And

And although that advice be given to ſome, that it belongeth not to the Plaintiffe to ſhew the proofe of his Action, untill it be denyed of the adverſe Party to haſten right, nevertheleſſe ſuch uſage is ſuffered, as in this caſe following, and others it is; as if any Sheriffe or other, take one to be Bayle or Surety for another and he denyeth it, it behoveth the Plaintiffe to ſay that he wrongfully denyeth it, and therefore wrongfully; for in ſuch a yeare, ſuch a day, and before ſuch a one, of his owne will he became Pledge for ſuch a one, and the Plaintiffe to haſten his buſineſſe ſuffered to ſhew the ſame in his Declaration, and if he denyeth it, &c. the Anſwer of the adverſe Party is ſuffered to be taken, and afterwards he is to goe to proofe by his Replication.

CHAP II.

Sect. 14.

Of Appeale of Burning.

THe Appeales of Burnings are in this manner; *Cedde* here appealeth *Harding* there (which he ſir-names) for that, that whereas this ſame *Cedde* had one houſe, or divers; or a ſtack of Corne, or of Hay, or a Mill, or other manner of goods in ſuch a place; or thus, whereas *Wetod*, Father, or Mother of this *Cedde* was in ſuch a place ſuch a day, &c. the ſame *Harding* came

came thither, and put fire into the houſe, and burnt the ſaid *Wetad* therein, whereof he dyed; and this felony the ſaid *Harding* did felloniouſly.

CHAP. II.
SECT. 15.

Of the Appeale of Murder.

OF the Offence of Murder, the Appeales are ſuch, *Knotting* here Appealeth *Carling* thus; That where *Cady*, Father, Brother, Sonne, or Vnckle of this *Knotting* was in Gods peace and the Kings, *ſcil.* in ſuch a place, the ſame *Carling* came thether, and the ſame day and yeare, &c. with a ſword, or other kinde of weapon run him through the body, gave him ſuch a wound, in ſuch a part of his body, whereof he dyed; this murder he did upon malice fore thought felonioufly, &c. Or thus, with a Hatchet, or with a Stone, or a Staffe ſtruck the ſaid *Cady* upon the head, or elſewhere, of which ſtroke he dyed ſuch a day, at ſuch a place, &c. or thus, That where the ſame *Cady* was hurt, in ſuch a part of his body, of a curable wound; or had ſuch a ſickneſſe, or curable Diſeaſe, and put himſelfe to curing of this *Carling*, who ſaid he was a Phyſitian; the ſaid *Carling* came, and tooke upon him the recovery of the ſaid *Cady*, who by his folly, negligence, &c. felonioufly killed him;

him; Or thus, ſo long delayed his deliverance, whereby he killed him; Or thus, hung him, or felonioully killed him; Or falſly Iudged *Regicald* who firſt attainted the 12. Iurours, Witneſſes, who wrongfully hanged *Gordian* her Husband by 24. Iurours, who afterwards by ſeverall Appeales hanged the firſt 12. Iurours; Or thus, pained him ſo much to make him confeſſe, and to be an Approver, that he falſly acknowledged himſelfe to have offended, and made him to Appeale Innocents of Crime, ſo that it lay not in *Carling* that the ſame *Knotting* was not adjudged to death; Or thus; whereas the ſaid *Knotting* lay mayhemed upon his bed, and was reckoned ſo young, or ſo old, or ſo ſick that he could not goe, the ſaid *Carling* came and carried the ſame *Knotting* from ſuch a place, ſuch a day, &c. to ſuch a Water, Ditch, Marle-pit, or Deſart, and therein threw him, and ſo left him without helpe or ſuſtenance, ſo as he did as much as lay in him, that he was not there dead of Famine; this miſchance he did unto him felonioully, as a Felon, &c.

CHAP. II.

SECT. 16.

Appeales of Robbery and Larcine.

THe Appeales of Robbery are theſe; *Osmond* here appealeth *Saxemond* there, That

That whereas this *Osmond* had a Horſe of ſuch a price, the ſaid *Saxemond* came ſuch a day and robbed him of his Horſe, &c. or of ſuch a Garment of ſuch a price feloniouſly; or of two Oxen of ſuch a price, or other kind of goods of ſuch a price, &c. he received the ſaid goods ſo ſtolen, or was aiding, or conſenting thereunto.

Of Larcine thus: Armelwolde here Appealeth *Oskertill* there: That whereas he had ſuch goods, namely, &c. he felonioufly, and as a Theife ſtole them away.

In theſe Actions meete two rights, the right of the poſſeſſion, as of the thing robbed or ſtolen out of his poſſeſſion who had no right in the property, as of things taken from the Baylee, or Leſſee; and the right of property as it is of a thing ſtolen or robbed out of the poſſeſſion of him who hath the property in the thing.

CHAP. II.
SECT. 17

Of the Appeale of Burglary.

OF Burglary are theſe Appeales; *Athalf* here appealeth *Colgrum* there; That whereas the ſaid *Athalf* was in ſuch a place in peace, &c. thether came the ſaid *Colgrum*, and with force and armes affaulted his houſe, and in ſuch a part brake it, or did ſuch like other violence feloniouſly, &c.

CHAP. II.
SECT. 18.

Of the Appeale of Imprisonment.

OF the Appeale of Imprisonment thus; *Darling* here appealeth *Wilot* there; For that whereas the said *Darling*, &c. the said *Wilot* came and arrested the said *Darling*, and brought him to such a place, or at such a day, and put him into the Stocks; or in Irons, or in other paine, or inclosure, from such a day untill such a day, &c. or thus; contrary to sufficient Bayle offered by him, in a case bayleable detained him, or after Iudgement given for his deliverance from such a day to such a day, this felony he did feloniously, &c.

CHAP. II.
SECT. 19.

Of Appeales of Mayheime.

APpeales of Mayheime are these; *Umbred* here appealeth *Maimawood* there; For that whereas the said *Umbred*, &c. the same *Maimawood* came and made an assault upon him of fore-thought malice, and armed in such a manner, cut off the foot, or the hand of the said *Umbred*; or with such

such a staffe stroke him upon the head whereby he pierced the scull of his head; or with a stone struck out his three foreteeth, whereby he mayhened him; this Mayhem he did felonioully, &c.

CHAP. II.
SECT. 20.

Of the Appeale of wounding.

OF Wounding are these Appeales; *Barnings* here appealeth *Olif* there; That whereas the said *Barnings*, &c. the said *Olif* with such a weapon strucke him, and wounded him in such a part of his body, which wound contained so much in length, so much in breadth, and so much in depth; and this wound he gave him felonioully.

CHAP. II.
SECT. 21.

Appeale of Rape.

AN Appeale of Rape is in this manner; *Arneborough* here appealeth *Atheling* there; For that whereas the said *Arneborough*, &c. the said *Atheling* came, and with force cast her downe, and in dispite of her felonioully ravished her; and because that every Rape used not to be

holden for a mortall offence, no Appeale was thereof, if therein she did not say, and tooke away her Virginity.

CHAP. II.

SECT. 22.

Of Offences reall at the Kings Suit.

THere are many who seeke not Absolution, notwithstanding they have offended against the King mortally; & therefore because the King is bound *Ex officio* to compell them to salvation, the King used every seaven yeares to goe through all Shires in his Realme, to make enquiry according as before is said; further, in aide of such Eyres were Coroners, Sheriffes Turnes, Viewes of Franck-pledges and other Enquests to enquire of those offenders as is said.

But because some are wrongfully slandered, King *Henry* the 1. Ordained, that none should be arrested nor imprisoned for slander of mortall offence before he were thereof endicted by the Oathes of honest men, before those who had Authority to take such Indictments, and then they were fitst to be seised upon by their bodies, and goods, as in Appeales, and to be kept in prison till they cleared them of the infamy before the King or his Justices.

Of the Crime of Majesty in no kind was any

any Indictment but of Hereſie or Romery, whereof if any were indicted and brought to Judgement, let there be an indictment for the King by ſome of his people in this manner, according to that which is found in the Roles of ancient Kings.

I ſay *Sebourge* there is defamed by good people of the ſinne of Hereſie, becauſe that he of evill Art, and beliefe forbidden, and by Charmes and Enchantments he tooke from *Brighten* by name, &c. the flower of his Ale, whereby he loſt the ſale thereof, ſo that Judgement be not given of leſſe then three perſons; or thus, *Molling* who is there defamed by good people, that ſuch a day he denied his Baptiſme, and cauſed himſelfe to be circumciſed, and became a Iew, or a Saracen, or offered or ſacrificed to *Mahomet* in contempt of God, to the Damnation of his Soule; and this offence he did felonioully, &c. and ſo in every like Caſe for the King; and if he will deny it I am ready to prove it upon him for the King, as to the King it belongeth to doe; that is to ſay, according as an Infant within age.

Of falſifying thus; I ſay for the King, that *Mimunde* there is defamed, &c. for that he ſuch a day, &c. falſifyed the Kings Seale, or his Money, in ſuch a kind, or ſuch, &c.

Of Treſpaſſes Indictments now ceaſe; of Burnings thus, I ſay &c. that *Seabright* there is defamed, &c. for that at ſuch a day, &c. he ſet a fire ſuch a houſe or goods, &c.

Of Murder thus, I ſay &c. that ſuch a one, with ſuch a weapon ſtruck *Agole* in ſuch a part of his body, by which ſtroke he is killed, &c.

The degrees of Acceſſories are to be ſhewed after the Principalls according to their right.

Of Larcine in this manner; I ſay, that *Cuthert* there, &c. robbed ſuch a man knowne, or unknowne of his Horſe, or of other kind of goods, &c. or felonioufly ſtole, or was conſenting to the offence of ſuch Theeves knowne, or of unknowne Theeves by taking of Theef-boot which is a receipt of Larcine, which he wittingly took to ſuffer ſuch a one to paſſe, or to ſtop Suit, or wrongfully to procure his pardon.

CHAP. II. Sect. 23.

Of Offences perſonall at the Kings Suit.

A Perſonall offence is divided into two branches, whereof the one extendeth to Perſons, and the other to Goods.

The Perſonall offence which extends to Perſons is divideable into great offences, and ſmall offences; and although the King have Conuſans of all offences, yet he reſerveth only the ordering of all groſſe offences to himſelf, and the Conuſance of the leſſer he leaves to all thoſe men who have Courts within their Demeſnes; and upon this diviſion of offences hath the King eſtabliſhed the Peace, ſo as ſuch Lords & Bayliffs have the ordering of the Peace for ſmal offences.

The

The Veniall offences Perſonall are theſe, Perjury when one telleth a lye againſt the King;, and Perjury of his Officers; The mortall offences not declared felonioully, as Impriſonment, Mayheim, Wounding, Battery, are to be ſhewed without Appeales, Alienation of old treaſure found, Diſſeſin, Reddiſſeiſin, and many others; the declarations of Perſonall offences, venialls, infamatories, are to be declared at the Kings Suit in this manner:

I ſay for our Lord the King, that *T* there is Perjured, and lyed againſt the King; that whereas the ſaid *T* was the Kings Chancellour, and was ſworne that he ſhould not ſell nor deny right, nor remediall Writ to any Plaintiffe, the ſaid *T* ſuch a day, &c. and ſold to ſuch a one a Writ of Attaint, or other remediall Writ, and would not grant it him for leſſe then halfe a marke, &c. Or thus, whereas he was one of his Iudges aſſigned, and was ſworne to doe Iuſtice, &c. he in this manner, in ſuch a Court gave Iudgement, or awarded againſt ſuch a Party, or releaſed ſuch a Party, or uſurped ſuch Iuriſdiction upon the King, or made himſelfe Iudge, Coroner, or Sheriffe, Bayliffe, or other Miniſter of the Kings without Warrant, or thus, whereas he was Chauncellor of the Exchequer, &c. he forbad to give an Acquittance of ſo much as ſuch a one had paid of the Kings debt under the Exchequer Seale, or delayed to give an Acquittance from ſuch a day, till ſuch a day,

and would not give an Acquittance unleſſe he bought it for ſo much; or thus, for that he holdeth Plea againſt the Kings forbiding, or in prejudice of the King and his Crowne, and the rather ſeeing it belongeth not to any Eccleſiaſticall Judge to hold ſecular Pleas, but only of Teſtamentary and of Marrimony; or thus, he diſturbed the giving of Judgement, or ſurceaſed ſo to do juſtice by negligence, or by his conſent.

In this manner are the Preſentments to be made at the Kings Suit, of Perſonall wrongs of all his Miniſters great and ſmall; and alſo againſt all others not his Miniſters, of all wrongs done to the King by thoſe who have ſworne fealty to him.

CHAP. II.

SECT. 24.

Of Veniall Treſpaſſes, and Perſonall Suits.

TO thoſe who have cauſe of Action and will not purſue revenge according to their rights by Actions of Treſpaſſe to recover damages for the Treſpaſſes; nevertheleſſe ye are to diſtinguiſh where the Treſpaſſe is done to the perſon of a man, and where to his goods.

And if to a mans perſon, every one may have an Action to whom the Treſpaſſe is done,

done, except thoſe who can maintaine no Action without their Guardians.

And if to the goods, then ye are to diſtinguiſh whether to his proper goods, or to the goods which he hath with others in common.

And if to the proper goods, then to diſtinguiſh if proper to a man, or belonging to another thing, as to the Crowne, or to any Church.

If to a man, then to diſtinguiſh if to a man free of himſelfe, or to a man who is in ward.

And if to a man free of himſelfe he hath ſeverall Actions, and if proper to any other in ward, the Action belongeth to the Guardian.

If to a man in ward, the Action belongeth to the Guardian, or to the next of Kin, Parent, Affine, or Alley of his name to the uſe of him who is in ward.

Of goods which are in common no ſeverall Action lyeth, and therefore of goods which belongs to men of Religion, the Action belongeth to the Soveraigne of the houſe, in his name for him and his Covent, or in his owne name, and the name of him who is in his cuſtody, if the Action be an Action perſonall, veniall.

And there is a difference betwixt Actions which are to cauſe death, and pardonable Actions, for as much as to mortall Actions the Suit is to be brought firſt againſt the Principalls, and afterwards againſt the Acceſſories; and in Veniall

Actions

Actions of perſonall Treſpaſſes, all ought to be comprehended in the Plaint in common, the Principalls, the Commanders, the Conſpirators, and the Acceſſories, for as much as a man ſhall not recover ſeverall damages by ſeverall plaints thereof; nevertheleſſe none of the Acceſſories is to plead to the Action before the Principall hath pleaded, or be condemned for his Contempt.

Perſonall Treſpaſſes uſed to be heard and determined in inferiour Courts of Lords of Fees, and then the offenders were Attachable by their bodies, and they uſed to keepe them and bring them to Judgement, if they were not bayled, without offending the Law.

The remediall Writ of Treſpaſſe requireth bayle to them, which whoſoever could not finde was to remaine in Cuſtody without his Keeper, becauſe they were bound to acquit their Pledgers.

And if any nevertheleſſe become Pledges of their owne will in ſuch caſes, they are to be taken; but if they are thereby endamaged by Non-ſuit of the party, they had no recovery againſt the principall Surety; a purſuing may be in divers manners, ſometimes by Pledges, as it is of thoſe who can finde them; ſometimes by truſting them, as it is in caſe of Forreigners and poore, who have not ability to finde Pledges; and ſometimes by the bodies of the Plaintiffes, as it is of Appealees, who have no other Sureties but the

the foure walls of the Priſon.

And for the dureneſſe which is uſed to be done to the bodies of offenders in perſonall offences, or veniall, King *Henry* the 1. Ordained; That they ſhould arreſt them firſt by their bodies, untill they juſtifie themſelves by Bayle; and if they be not found, and if they doe not diſcharge their Bayle, they are then to be diſtreyned by their Lands to the value of the demand, and if they then make default, their Lands are to be delivered over to the Plaintiffes, untill they have made ſatisfaction by a reaſonable Extent, if before they have not acquitted themſelves by Law.

Of Pledges, note that thoſe are Pledges for purſuing who the Plaints affirme, and thoſe are Pledges who reprieve any other thing beſides the body of a man, for they are not properly Pledges, but Maine-priſors, becauſe they ſuppoſe that thoſe pleviſables are delivered to them by Bayle for the body.

The ordinary Declaration of Veniall Plaints begins in this forme; I ſhew unto you who am here; that *E.* who is there wrongfully delayed his Action, by a falſe eſſoigne which he caſt ſuch a day, in ſuch a place, &c. to the great damage of the Plaintiffe.

And of Treſpaſſes done againſt the Kings Peace it is eaſie to ſhew, and of Treſpaſſes done againſt Lords or Bayliffes, and in hatred of falſe Plaints, King *Henry* the Ordained, that audience were forbidd[illegible]

en

to Plaintiffes in veniall Actions, and that none was bounden to answer such Action, if they had not present proofe of a lawfull Suit.

And there is such a difference between a Criminall Action in pleading and a Veniall, that if a Serjeant put these words, *scil.* (felonioully as a Felon, &c.) in Declarations of Veniall Actions, the Declarations are vitious and abateable, because that no Judge hath power by a Veniall Plaint to determine felony; and in the same manner is the Count vitious and abateable, where the Count is upon the right of property, and upon the plea of Possession, *Et è contra*, and there are some Actions wherein no Declaration or Count; as in Disseisin, Redisseisin, Certifications of Assize, false Judgements and Attaints.

CHAP. II.

Sect. 25.

Of Assize of Novell, Disseisin, and Reddisseisin.

AMongst other personall Trespasses, it is not to be forgotten to make mention of Disseisin, of which it is needfull first to see to the Title, why it is called *Assize of Novell Disseisin.*

An Assize in one Case is nothing else but a Cession of the Justice, in another case it is

is an Ordinance of Certainty, where nothing could be more or leſſe then right; for the great evills which is uſed to be procured in witneſſing, and the great delaies which were in the Examinations, Exceptions, and Atteſtations, *Randolphus De Glanvile* Ordained this certaine Aſſize, that Recognitions ſhould be ſworne by 12. Jurours of the next Neighbours, and ſo this eſtabliſhment was called Aſſize. In the third caſe Affize is taken properly for an Action in foure manner of Pleas Poſſeſſories;

Scil. { *Novel Diſſeſius*
Moldamceſter.
Darreis Preſentment.
Juris utrum.

But ſuch Aſſize are called *Petit* Aſſizes, to make a difference from Grand Aſſizes, for the Law concerning Fees is grounded upon two rights of Poſſeſſion and property.

And as the Grand Aſſize ſerveth to the right of property, ſo the *Petit* Aſſize ſerveth to the right of Poſſeſſion, and becauſe ſuch *Petit* Aſſizes are to be taken of the Counties where the Fees are, by the Statute of King *Edward* called ſuch Actions, Aſſizes, either for the genetall Ceſſion of the Juſtices, and of others, or from the proper names of ſuch Actions.

It is called *Novell*, to put a difference from thoſe which are ancient, for anciently Kings uſed to goe over the Shires to enquire, heare, and determine offences, and to redreſſe the wrongs there, and that which

which was not brought in such Eyres of personall Trespasses before remained to the Judgement of God alone; and afterwards by reason of the multitude of offences, and that Kings could not doe all by themselves, therefore they sent their Commissaries who now are called Justices in Eyre, who have not power to decree and determine a personall offence, but for a thing brought and not determined in the last Eyre; Then for as much as the Disseisin, or the personall Action was brought before the Eyre, the Action or Disseisin was ancient; but if the Disseisin be done since the last Eyre, then it is a Novell Disseisin.

Disseisin is a personall Trespasse, of a wrongfull putting one out of possession, it is said wrongfull to put a difference from rightfull, which is no offence; as if I take from my Wife, or my Villain, or from another who is my Ward that which is my owne; or if you take from me that which is mine, I take it from you againe, I doe not offend, for I am warranted so to doe by the Law of Nature, seeing this usage is common to Men, Beasts, Fishes, Fowles, and other earthly Creatures; but I cannot doe so afterward; for if I take from you forcibly any thing whereof you have had the peaceable possession, I doe disseise you, and I doe wrong to the King, when I disseise him of his right, or use force where I ought to use Judgement. On the other side, that which is taken from me by the rightfull

rightfull Judgement of any Judge Ordinary, or Arbitrary, is not taken wrongfully from me.

Wrong is here taken as well for deforcement or diſturbance, as for ejection.

Deforcement, as if another entereth into anothers Tenement, when the rightfull owner is at the Market, or elſewhere, and at his returne cannot enter therein, but is kept out, and hindred ſo to doe.

Diſturbance is, as if one diſturbe me wrongfully to uſe my ſeiſin which I have peaceably had, and the ſame may be done three waies.

1 As when one driveth away a diſtreſſe, ſo that I cannot diſtreyne in the Tenement lyable to my diſtreſſe, whereof I have had ſeiſin before.

2 Another is where one doth Repleive his diſtreſſe by the Sheriffe, or the Hundred wrongfully.

3 As if one diſtreyne me ſo outragiouſly that I cannot manure, Plow, or uſe my Land duely; in which Caſe it maketh one an outragious diſtreyner to diſſeiſe, or for to eject the Tenant; as if any one eject me out of my Tenement, whereof I have had peaceable poſſeſſion by diſcent of Inheritance, or other lawfull title to the poſſeſſion.

Note that all right is in two kinds, either in right of poſſeſſion, or in right of property, and therefore the right of property is not ſo determinable by this Aſſize, as is the knowne poſſeſſion, or as that which alto-

altogether savoureth of a possessory right.

The remedy of Disseisins hold not of moveable goods, nor of any thing which falleth not into Inheritance, as Land, Tenement, Rent, Advowson of a Church, and a house of Religion, Franchises, and the Appurtenances, and such other rights, whether they are holden perpetually in Fee, or for terme of life, or yeares, according to the Contract, as well as the Land morgaged to such a one and his Heires untill so much be paid to such a Tenant or his Heires.

Ejection of a terme of yeares falleth into the Assize, which sometimes commeth by Lease, or Baylement, or Loane, and sometimes by right of Wardship by the Nonage of some Heire, and to the recoverer it belongeth to hold them according to the Contracts.

Villinage in some Case falleth into this Assize; as to Free-tenants who are ejected or disturbed to continue their seisin of lawfull Presentments, and whereof a Bargaine is made betwixt any Doner, and any Purchaser, & although that the Purchaser cannot present living the Clerke of the Doner instituted into the Church; the Title nevertheless of Contracts barreth not altogether the Donee, so that afterwards he cannot present against the forme of the Contract, and if he doe the Doner falleth into this Assize, and the Bishop who gave the Institution to him who is not presented, by him to whom the right of presentation

sentation doth belong in his owne name.

Into this Assize also fall Donors and Purchasers, who make vicious Contracts of Lands and Possessions, as also it is of Guardians, and of Farmers who Lease their Lands for a longer time then their terme endureth, in prejudice of the Lord of the Fee, or of him to whom the Reversion belongeth, as it is of those Lessors who have Fee tayle.

On the other side fall into offence those the Kings Officers, and others who disseise a man, or a Corporation of their Franchises, whereof they have the Inheritance by lawfull Title, if not through the default, abuse, or negligence of those, or of their Bayliffes to whom the Franchises belong.

Into this offence also fall all Attornies, who yeeld up the Inheritance, or Freehold of their Clyents in Judgement, and the Justices also who yeeld to them, and the Tenants also; for it behoveth not Attornies to lose their Clyents rights, but it behoveth them to defend them till a rightfull Judgement be given.

Into this offence fall all those who commit any wast, exile, or destruction in Lands, as that which is not justifiable by Law, as those who assigne over Lands to others, where in the Feoffments to themselves, or their Ancestors there is mentioned but of Heires only, and that may be two waies, *viz.* to Heires generall, or to speciall Heires, named as in Fee tayle, or not

named, as in Franck-marriages.

This Action all Persons may bring, Men, Women, Clerkes and Laymen, Infants and others of what condition soever they be, who are not forbidden by the Law.

It is forbidden to Villaines to bring this Action without their Lord, for as much as they are in the Custody of their Lords; In the same manner to Feme Coverts, and to others who are in Ward, and to those who were never Tenants in their owne names, but in the name of the Lord.

The Law also denyeth the Suit to those who have withdrawne themselves from the same action in Judgement, or have released or quit-claimed their right.

And note, that *Retrahere, & sub-trahere* is not all one, *Retrahere* doth acquit a man from those things which are in his Writ, or in his Action; but neither the one nor the other can utterly barre him, if he doe not openly declare the same; but *sub-trahere* withdraw his Action, every Plaintiffe may doe either by himselfe or his Atturney, whether he be present in Court or absent, and although it be that one will not pursue his Action, yet he doth not so barre himselfe, nor withdraw himselfe, but that he may have a new Writ, and a new Plaint, if he doe not openly in Judgement say, that he withdraweth his Action; these remedies hold against a Disseisor, and where there are many, against all those who appeare in the force, or in the aide.

CHAP.

CHAP. II.

SECT. 26.

Of Diſtreſſes.

ANy action rightfully grounded upon a Perſonall Treſpaſſe, accrueth to people wrongfully diſtreyned, which is called a Diſtreſſe, and becauſe that none can cover his Robbery, or his Larcine by Diſtreſſe, it is 1 to be knowne what is the diviſion of Diſtreſſes.

2 Who may diſtreyne.

3 When, and of what things a Repleive lyeth.

A Repleive is nothing elſe but a reaſonable diſtreſſe.

A reaſonable diſtreſſe is to the value of the thing in demand without any other fault, for no outragious diſtreſſe is termed lawfull.

There are two manner of Diſtreſſes, a dead diſtreſſe, as of Corne, Wine, and other ſuch Chattels; and a live diſtreſſe, as of a Man, a Beaſt, and of ſuch like things.

No man can diſtreyne who is not warranted ſo to doe by Law, or by ſome other ſpeciall deed.

1 By the Law, as for Damage feaſance, and for Debts and Contracts of Forraigners; for Forraigners are diſtreynable by their moveable goods, and ſummonable

because they are not free Tenants in the places where they are destreyned; and for (as well) a Debt recovered as any other, and so for Amercements of damages, and Arrerages of Accompt, or other thing.

2 By Deed, as if you grant me any Annuity, and doe grant me to distreyne in the Lands for the Arrerages of the same, or other service, and binde your Possessions which are not of my Fee in whose hands soever they come to a distresse.

When and what things a man may distreyne.

A man may distreyne Cattell or other things so soone as he findes them damage feasant, and not the day after, and after the time of paiment, and not before, and not every day; And in the night a man may not distreyne, but only in the day time, but for damage feasant; for before Sun rising, or after Sun set no man may distreyne but for damage feasant, where a man may distreyn in places, or Lands within the Fee, lyable to distresse and not elsewhere. *Of what goods a Distresse may be.*

Of all goods which the Law forbideth not, the Law forbids that a man shall not distreyne within the view, where he may have a sufficient distresse in an open Covenable place.

A Covenable dead distresse is not by Armour or Vessels, by Robes or Jewels, by Writings if there be found another distresse sufficient in it selfe.

A Covenable live distresse is not to be of Sheepe which are guelt, Murrons, of Doggs,

Doggs, Birds, Fiſhes, or by Savage Beaſts when there is a ſufficient diſtreſſe found of other Cattell.

A diſtreſſe is to be carried, lead, or driven away at the will of the diſtreyner, and in caſe any diſtreyner finde not any diſtreſſe but within ſome incloſure, in ſuch caſe he can doe nothing, but to ſhut up the goods incloſed, and ſo ſequeſter them without doing any other violence, and if a man breake up ſuch Pound, or the locks of it, or part of it, he greatly offendeth againſt the Peace, and doth Treſpaſſe to the King, and to the Lord of the Fee, and to the Sheriffes, and Hundredours in breach of the Peace, and to the Party, and to the delaying of Juſtice; and therefore Hue and Cry is to be levied againſt them, as againſt thoſe who breake the Peace.

A dead diſtreſſe found in a Covenable place, nor a live diſtreſſe is not to be led, or driven out of the Mannour, or out of the Hundred, or out of the County, nor to be put in any pound or elſewhere, where he to whom the goods are belonging cannot have ſight of them, but is to be put into ſuch a place where the diſtreſſe, and he who is the owner may be leaſt endamaged.

There are two kinds of leading of diſtreſſes

1 One when a man leades away a live diſtreſſe againſt ſufficient Gages & Pledges.

2 Another, when one will not ſuffer himſelfe to be diſtreyned lawfully, and

the one and the other are Perſonall Treſpaſſes againſt the Peace.

And then if any be wrongfully diſtreyned, ye are to diſtinguiſh whether it be by thoſe who have power to diſtreyne or by others.

And if by others, then lyeth an Appeale of Robbery, whereof *Hailif* gave a notable Judgement; and if by thoſe who may diſtreyne, then they ought to deliver the diſtreſſe by Gages and Pledges.

And if the diſtreyner, and the Plaintiffe of the diſtreſſe lead it away, then the Counſans thereof doth belong to the Kings Court, and ſo there is remedy by a Writ of Replegiary.

Nevertheleſſe, for the releaſing of ſuch diſtreſſes, and for the haſtening of the right, *Randulf de Glanvile* ordained, That Sheriffes and Hundredours ſhould take Sureties to purſue the Plaints, and ſhould deliver the diſtreſſes, and ſhould heare and determine the Plaints of tortious diſtreſſes, ſaving to the King the Suit, as to the leading, &c.

Two things fall in theſe Plaints; Plaints of taking, and of detaining; whereof there are foure degrees.

1 Where the taking is juſtifiable for lawfull, and the detaining alſo, as for a debt due, or debt recovered.

2 Where both are wrongfull (as) ſuch as are diſavowable both in the taking and detaining.

3 Where

3 Where the taking is lawfull, as in damage feaſant, and the detaining tortious, as againſt ſufficient Gages and Pledges tendered.

4 Where the taking is tortious, as in a pound, and the detaining lawfull, as for a Debt confeſſed, and of no more have the ordinary Judges Counſans; but in caſe where the Plea begins by Writ, Counſans ought to be made of the taking; of the detaining lyeth remedy by an Aſſize of Novel Diſſeiſin.

The taking and the detaining are ſometimes by Parties knowne, and ſometimes by Parties unknowne, but although the Perſons are knowne, nevertheleſſe the names of the detainors ought to be known; and according to that the Avowant or the Plaintiffe, or of his Bayliffe if he be not preſent, ought to frame his Declaration, and the Plaint joyntly againſt the Perſons, and againſt the detainers, or ſeverally againſt one of them, and if againſt them both then thus; *A* wrongfully tooke, and cauſed to be taken, by ſuch a one knowne, or unknowne, &c. and drove, and carried away, &c. and wrongfully doth detaine from him, &c. againſt Gages and Pledges, and is yet ſeiſed thereof: or thus, wrongfully detained from ſuch a day till ſuch a day, that he delivered the ſame to the Kings Bayliffe to his damage, &c. for theſe words (and yet is thereof ſeiſed) leaves it to them, that they cannot have fight

of the distresse, and to those who detaine the distresse by Avowrie of property.

CHAP. II.

Sect. 27.

Of Contracts.

A Contract is a speech betwixt Parties, that a thing which is not done be done, of which there are many kinds, whereof some are perpetuall, as those of Matrimony; others are temporary, as of Baylements, and Leases; and one kind is mixt, as of Exchanges, which sometimes are for a time, and sometimes for ever; and one speciall kinde is an Obligation.

And because the Law doth not entermedle with every Contract, we are to see who may Contract, and of what things Contracts may be; every one may make Contracts with all persons who is not forbidden by Law.

The Law forbideth that none Contract with the enemies of the King of Heaven, nor with the enemies of their earthly King; nor with any mortall offenders, nor with those who are not of the Christian Faith, nor with Our-lawes, nor Waives, nor with those who are knowne Felons, not Excommunicated, nor with any who are in Ward, if not to the profit of those who are in Ward; nor with Deafe, nor Idiots,

nor

nor Mad-men, nor Appealees, nor Perſons endicted of Crime.

Of what thing a Contract may be made.

Of all things not forbidden by Law. The Law forbiddeth that a man doe not make a Contract of the right of another, although he offend not; the Law forbids Contracts of Uſury, Diſſeiſin, hurting of the body, diſ-inheriting, and of other offences or vices.

Contracts are forbidden which are to the damage of the Party gayning, by vice, by forbidding mixture of offence.

Contracts are vicious; 1 Sometimes by intermixture of offence; 2 Sometimes by intermixture of ill beleeſe; 3 Sometimes when they are made againſt that which is abſolutely forbidden; 4 And ſometimes by falſe ſuppoſition.

In the firſt Caſe, as if I Contract with you, that if I doe not ſuch a thing, or ſuch a thing, that it ſhall be lawfull for you or another to kill me, or to wound me, or impriſon me; Or of Uſury, that you ſhall not demand of *C.* for 100. l. or other thing, &c.

In the ſecond, as if I give, or deliver, or leave a thing with you in hope that you will re-deliver the ſame to me againe, and you detaine this thing from me; Or if I deviſe in my Will, that you ſhall ſell ſome of my Tenements to pay my Debts, or to doe other things with the money, and you being

being my Executer, keepe this money for ever to your owne use, without doing of it; Or if I sell, change, deliver a lease unto you to have so much of you at such a time, and you keepe from me that which you promised.

In the third Case, as if I make any Contract with those with whom it is not lawfull, Nevertheless the Contract of Matrimony is not forbidden betwixt Infants, although it be used to be, but in case of Disparagements; for disparagement is an offence which is greatly forbidden.

The fourth Case, as of Charters, or other kinds of Minuments, as it is of Charters, and Feoffments made in the seisin of the Donors, and of Charters of Quit-claime made out of the fiefin of those who have them; for no Charter, no Rent, nor gift remaineth good for ever, if the Donor be not seised at the time of the Contract of two Rights, of the right of Possession, and the right of Property; and as a Charter supposing a gift to be made without difference is void, so is the Quit-claime of a thing whereof the maker of the Deed is not in Possession of the thing Quit-claimed.

And as the Charters in the Cases aforesaid are nothing worth, so also are the Warranties, and whatsoever belongeth to such estates, which are without force by vertue of such false supposition.

On the other side, suppose that a sing'e Deed be false, which testifieth the gift to be

be returned to the Donor, or to his Heires, or in any other manner of Condition; for a gift is alwaies simple, and not of the same affection of the giver as to the right of the gift, that the thing given should remaine to the Purchasor without hope of Reversion.

A single Deed is a Minument without Indenture, and therefore the Law requireth, that Escripts, Testimonialls of Contracts conditionall, supposing a Reversion be Indented, and Chirographed.

Contracts are supposed false in taking Homage in deceit of the Law, as if I take your Homage for other service then for the service issuing out of the Tenure *De Haubert*.

The Law forbiddeth also, that none let nor take any Land, nor Fee, nor Possession, nor terme of yeares to come above the terme of forty yeares, nor that any Contracts be made in Fee farme for ever, nor for yeares, rendering more Rent by the year then the fourth part of the value; nor that any be endowed of Advowsons, nor any Allienation of Advowsons be made out of the blood, if not in perpetuity, or Fee-simple, nor that an Advowson be partable amongst Parceners, but that it remaine entirely to the next Heire of the Ancestour, or that there be any Lease for yeares left, or Fee tayle thereof, for the Advowson of a Church is so much in the spiritualty that there can be no Allienation thereof, but in Fee-simple.

In

In rights of Contracts of Baylement, and Administration of other goods and monies, it is lawfull for every one wisely to dispose of his goods to whom he will; and therefore it is advised that every one have Bayliffes, or Officers who he conceiveth doe well understand the Mannour, and if he be endamaged by any servant, or other hurt, that it be accounted his owne folly, seeing he tooke not sufficient surety of their faithfulnesse and discretion; and *è contra*, for against him who hath nothing the Law giveth no recovery, nor other remedy but revenge; nevertheless if there be any such Bayliffes who will not render a true accompt to his Lord, he is chargeable thereunto by a Writ of Accompt, which is a mixt Action if he have wherewith to justifie himselfe; and if he be not distreynable, nor a Free-holder, and deceiveth his Lord, and will not render an Accompt for such disobedience, he shall have the said Action personall mixt.

And according to the change of the natures of the Actions, the formes of the remediall Writs are changed.

And although that such for their contempts are banished for a time, or for ever, yet is no man to be Out-lawed, or Imprisoned for the same; but if any be in Arrerages to his Lord, ye are to distinguish thereof if he have any thing, whereof satisfaction may be made by Judgement, to the example of a Debt recovered, or otherwise.

CHAP.

CHAP. II.
SECT. 28.

Of Villinage and Neiſtie.

AN Action of Villinage, or Neiſtie is a mixt Action, grounded upon a Perſonall Treſpaſſe done to another, when a man proſecutes a Free-man to enſlave his blood.

This Action is a Mixt Action in favour of Liberty, for very ſeldome will any one depart from his Lords Mannour, if he claime not himſelfe to be a Free-man.

This Action hath Introduction, by Summons, and Attachments of the Lands.

A Waive is nothing elſe but a Villaineſſe, and notwithſtanding that according to the Law of Nature all Creatures ought to be free, nevertheleſſe by Conſtitution, and by the Deeds of men, (are) they and other Creatures enſlaved, as it is of Beaſts in Parkes, Fiſhes in Ponds, and Birds in Cages.

The Villinage of man is a ſubjection of ſuch great Antiquity, that by the memory of man no free Stocke can be found thereof; which ſlavery according to ſome is the Curſe which *Noah* gave to *Caanan* the Sonne of *Cham* his Son, and to his iſſue, and according to others of the *Philiſtines*, who became ſlaves at the battaile which was betwixt *David* and the children of *Iſrael*

Israel of the one party, and *Goliah* the Philistine on the other part.

And as other Creatures are kept in inclosures, so are villains kept to guard the Possessions of their Lords, and from thence are said Regardants; and so men are villains by the Law of God, by the Law of man, and by the Cannon Law.

From *Shem* and *Japhet* come the *Gentile* Christians, and from those from *Cham*, the Villains which the Christians may give away, or sell as they doe other Chattels, but not devise by Will, because they are Astriers, who are annexed to the Franck-tenement, and of them there are many others.

Those are Villaines who are begot of Villaines and Neifts in servitude, whether borne in Mattimony or out of Matrimony; those also are Villaines who are begotten of Villaines, and borne of Free women in Matrimony, and those are Villaines who are begotten of a Free-man and a Neife, and borne out of Matrimony.

The other manner of Villaines are those who are adjudged Villaines by a Writ of *Nativo habendo*, and their issue after them.

Villains become free many waies; some by Baptisme, as those *Saracens* who are taken by Christians, or bought and brought to Christianity by grace.

Some became Free by the Pope, as it is of those villains who by Bishops are ordained into Orders of Deacon, and above; but

but notwithſtanding the ſame a man ſhall not loſe his right thereby who will ſue for them.

On the other part villains become Free-men if their Lords grant, or give unto them any free eſtate of Inheritance to diſcend to their Heires, or if the Lord take their Homage for their land, or if the Lord eject them out of their Fees and give them ſuſtinance; or if he put them in a common Priſon if it be not for crime.

A woman after ſhe is put in poſſeſſion by her Lord, is never againe to be challenged as a Neiſe, notwithſtanding ſhe be ſold.

And if the Lord ſuffer his Villaine to Anſwer in Judgement without him in a perſonall Action, or to be a Jurour amongſt Free-men, as a Free-man knowingly, and without the Lords claime; the Villaine hath this Plea to the Villinage if he returne not of his owne accord.

Alſo a Villaine becomes free through the Lords default in a Writ of *Native Habendo*, as by his Non-ſuit in the Writ.

Alſo by proofe of a free Stocke, or to have been borne of free Parents.

Alſo by the Lords grant in Court, and alſo by preſcription; alſo for default of proofe, and alſo by the Lords negligence, as by the remaining of the Villaine within a City, or upon the Kings Demeſnes for a whole yeare; Or if wittingly he ſuffer his Villaine to be a Suiter in another Court, or to be ſworne in Aſſize, or elſe-

where

where amongst Free-men; if a Villaine depart from his Lord claiming free estate, so that he cannot seise him within the Mannour within the yeare, or out of his Fee, nor after his Writ of *Nativo Habend.* brought, it belongeth to the Lord that he bring againe that Action which is *Vict-Countiel*, and pleadable in the County by Summons, and Distresses of his Lands; for the Law requireth that he doe right, and use not force.

The Parties being brought to Judgement in the County Court, and the Action being declared in the Defendant by way of exception may plead that he is Franck, and because that a free estate is of a higher nature then Villinage; therefore because the Sheriffe hath not power to try so high a Plea by the Writ of *Nativo Habendo*, those Writs and such Pleas are suspendable till the comming of the Justices in Eyre into those parts; but if the King Command not to the contrary, those Pleas are not adjournable but from one County Court to another.

Note that all Villaines are not slaves, for slaves are said Regardant, as before; they can purchase nothing but to the Lords use, they know not in the Evening what service they shall doe in the Morning, nor any certainty of their services; the Lords may fetter, imprison, beat, or chastise those at their pleasure, saving to them their lives and members, these may not fly, or run from their Lords so long as they

they finde them wherewith to live; nor is it lawfull for others to receive them without their Lords consent; those can have no manner of Action against any man without their Lords, but in case of Felony; and if those slaves hold Lands of their Lords, it is intended that they hold them from day to day at their Lords will, and not by any certaine services.

Villaines are Tillers of Lands, dwelling in Upland Villages, for of *Vill* commeth Villaine, of *Burough* Burgesse, and of City Citizen; and of Villaines mention is made in the Great Charter of Liberties, where it is said, that a Villaine be not so grievously amerced that his Tillage be not saved to him, but the Statute maketh no mention of slaves, because they have nothing of their owne to lose.

Note by Villaines in this place is meant Copy-holders.

And of Villaines are their Tillages called Villinages.

Copy-hold called Copy holders.

And note, that those who are free, and quit of all servitude, become servile by Contracts made betwixt the Lords and the Tenants.

And there are many manners of Contracts of Fees, as of Gift, of Rent, of Exchange and Lease, which all may make for a time, or for ever, and quitment without Obligation, and charge of service, and with charge.

And these Contracts (as all other) are made by Writings, Charters, and Minuments, by solemne Witnesses, according to the example of Contracts of Marriages.

which ought to be a patterne to all other Contracts; according to which Example were the first Contracts made by the first Conquerour, when the Earles were enfeoffed of the Earldomes, Barons of the Baronies, Knights of Knights Fees, Serjeants of Serjanties, Villaines of Villinages, Burgesses and Merchants of Boroughs, whereof some received their Lands without Obligation, or service, or in Frankalmoigne; some to hold by Homage, and by Service for defence of the Realme, and some by Villaine Customes, as to Plough the Lords Lands, to Reape, out, and carry his Corne, or Hay, or such manner of service, without giving of any wages, whereof many Fines were levyed of such services, which make mention of the doing of these base services, as well as of other more gentile services; and although it be so, that the people have no Charters, Deeds, nor Minuments of their Lands, nevertheless if they were ejected, or put out of their Possessions wrongfully, by bringing an Assize of Novell Disseisin, they might be restored to their estates as before; because they could averre that they knew the certainty of their services, and workes by the yeare, as those whose Ancestours before them were Asteries for a long time, in case Disseisors were not their Lords.

Doomsday Booke, Vt credo.

And thereupon St. *Edward* in his time, caused enquiry to be made of all such who held, & did to him such services as ploughing his Lands, &c. besides their lawfull Customes.

And

And afterwards the people leſſe fearing to offend then they ought, many of theſe Villaines by wrongfull Diſtreſſes were forced to doe their Lord the ſervice of Rechat of blood, and many other voluntary Cuſtomes, to bring them in ſervitude under their power, for which their remedy was a Writ of *Ne inveſtà vexes*.

CHAP. II.

SECT. 29.

Of Summons.

THis Chapter maketh mention of ſpeciall Summons, to make a difference from generall Summons, where all Freeholders and others ought to come according to the nature of the Cry whereof, and every one may Summon by a Common Cry; but of this Summons this Chapter maketh not mention.

A ſpeciall Summons is a friendly admonition of an amendment of an offence, or wrong; and becauſe none is tyed to Anſwer to any Action reall or mixt before a Summons, therefore it is to ſee;

1 Who have Authority to Summon.
2 Who are Summonable.
3 In what place he is Summonable.
4 How farre one is Summonable.
5 At whoſe Charges.
6 How often.

7 Who may be Summonors.
8 What is a reasonable Summons.

1 All who have Jurisdiction, have Authority to Summon.

2 All those who are not forbidden by Law are Summonable, none is to be summoned for a personall offence, nor any one who is not a Free-holder.

3 A man is not summonable in all places, for no man is summonable, nor bounden to receive Summons out of the Fee of the Party who causeth the Summons, nor elsewhere but in the Mannour appendant to such a Court where he ought to Answer, nor in all places of the Mannour, but only at the Tenement in demand.

4 How farre one is summonable; not out of the Fee of the Court where one is to answer.

5 At whose charges? at the charges of those who are the first causers of the Summons, except in Juries and Enquests taken *ex officio*; for no Free-man is compelable to travell, and appeare in Judgements at his owne charges, notwithstanding that the Law requireth that every Tenant obey the Summons of his Lord.

6 How often one is summonable; but once in one cause, nevertheless re-summoned holdeth place in some case.

7 Who may and ought to be Summonors; no man is compellable to be a Sunmonor if he will not agree to it; nevertheless all those may be Summonors who will,

will, that are not forbidden by the Law. Women, not Villaines, nor infants, nor any infamous Person, nor any one who is not a Free-holder cannot be a Summoner.

8 It is a reasonable Summons, when it is testified by two loyall free Witnesses, Neighbours to the Person, or to the House, or Tenement contained in the Writ, with warning given of the day, place, party, Judge of the Cause, and a reasonable respite at least of fifteen daies to provide his Answer, and to appeare in Judgement. In Juries nevertheless, nor Enquests there need not be so full time or respite given.

CHAP. II.
Sect. 30.

Of Essoignes.

ESsoigne is an excuse of a default by any hinderance in comming to the Court, and lyeth as well for the Plaintiffe as for the Defendant.

The Law of every Essoigne is; That the cause of the hinderance be enrolled with the name of the Essoigner, so that if the diverse Party, or his Attorney, or Essoignor will traverse the Cause, he is to be received so to doe, that if he be found false, then that the Essoigne be turned to a default.

All those may be Essoigned who are not forbidden by Law, no Defendant in per-

sonall Actions, nor any after default can be Essoigned, nor any present in Court, nor doth Essoigne lye in a *Scire facias*, nor in a *Venire facias*, nor in a *Recordari facias toquelam*, nor in Admeasurement of Pasture, nor after the Parties have joyned issue in Judgement though the Jury appeare not, nor in case where the Plaintiffe hath not found Surety to pursue his Action, nor where one hath Attorney in Court, if both be not Essoigned, nor where the Summons is not testified; nor after an Essoigne not warranted, nor to him who was not named in the Writ, or in the Plaint, except in Warranties, nor any one who is re-summoned in Mort-dauncester, and Darrein presentment, nor when the day is not come, nor where the Essoigner commeth too late, nor any one whose adversary is dead, or any of his Parceners, nor he who is adjourned from day to day, nor the Kings Officer as Officer, nor he to whom it is commanded that he appeare if he please.

No Essoigne is justifiable if it be not orderly cast, nor is it allowed to Infants within age, nor to any who is in custody, nor to many having one right, if the Cause be not divers.

All may be Essoigners who the Law forbiddeth not; it is forbidden to Women, to Infants, to Villaines, and to all who are in Custody; to Mad-men, to Idiots, to Excommunicated Persons, to the Judges, and to the Parties in the Cause, to

Eſſoigners at other times not warranted, or ... ainted of falſe delayes, to criminall Perſons, and to thoſe who are not of the Chriſtian Faith, or in the Kings Alleagiance, it is forbidden that they be Eſſoigners.

There are chiefly two kinds of Eſſoignes; the one of the Kings ſervice, the other of hinderance.

The firſt is dividable, either into the ſervice of the King of Heaven, or of the King on Earth; of the King of Heaven in three manners.

1 Either for the generall paſſage of all to the Land of, &c. ——— and this Eſſoigne is not otherwiſe adjournable, but that the Parties goe without day, and are to appeare againe by Re-ſummons of the Plaintiffes, at the returne of the Defendant. This Eſſoigne is not allowable to Plaintiffes, nor to the Defendant reaſonably Summoned before his going from his houſe in a perſonall action, nor in other, but in a Plea which toucheth Inheritance; nor but in a Writ of Right Patent, but not of Dower, nor of Burgage.

The other Eſſoigne of the ſervice of the King of Heaven, is of a common Pilgrimage beyond Sea, towards the Holy Land, and this laſts for a yeare, this holds not but according as the other.

The third, of a Pilgrimage beyond Sea, as to *Rome*, or to Saint *James De compoſtella*, and takes place for halfe a yeare

and these Essoignees are to appeare the next Courts following the Termes adjourned.

After Re-summons holdeth place the common Essoigne *De mal venier*, and also after the terme of Adjournment, but this common Essoigne never holds place before the Essoignes before said.

The Essoigne of the King on Earths service is in two manners.

1 The one is of those who serve as Souldiers, as Messengers, or as Ministers; and this Essoigne is not respited but from Court to Court, or the common day, to the example of a common Essoigne, if it be not warranted at the next Court by the Kings Writ, it is to be turned to a default.

2 The other is of those who serve the King by Tenure of their Land for the defence of the Realme, and he hath no day; but the Plaintiffe is without day, and the Plea is to be re-continued in the same Estate when his Adversary shall be returned.

These latter Essoignes are allowable in Pleas, summonable to Plaintiffes and Defendants, except in Dower *Unde nihil habet*, *Quare impedit*, Darrein presentment; nor to Women, nor to Infants, nor to Idiots, nor to Deaf, nor to Dumbe, nor Mad-men, nor to any in custody, nor to any who is not free of himself; nor to any Atturney, as Atturney, nor where the Essoigner acknowledgeth the Cause in Judgement to be false, nor after any Cape, nor after distresse in the Land.

After

After the Eſſoignes of the Kings ſervice lyeth an Eſſoigne of *Malo veniendi*, but not *è contra*.

The Eſſoigne of diſturbance or hinderance is dividable, either of ſickneſſe, or of ſome other hinderance, as of thoſe who comming towards the Court are taken by the Kings enemies, and ſo hindered; or by Waters, Bridges, or enemies diſcovered, or by Tempeſts, or other reaſonable diſturbance, ſo that they have not power to appeare at the day.

The Eſſoigne of hinderance and ſickneſſe is divideable, either of languiſhing, which is called *De malo lecti*, and that holdeth place for a yeare; or of ſickneſſe in the Journey, and that holds not but to the example of a common Eſſoigne; in theſe Eſſoignes of hinderance are Eſſoignes *De malo veniendi*.

This Eſſoigne lyeth after every Summons, and generall Re-ſummons upon Pleas, except to Jurours, and thoſe who are ſummoned for the common-wealth.

But of Adjournments it is to diſtinguiſh; for in the Eyre of Juſtices the Adjournement is for three daies, or foure at the moſt, or leſſe according as the places are neare, or containe; and to this Eſſoigne is reſpited fifteen daies at the leaſt.

The Eſſoigne of ſickneſſe in paſſage lyeth before the Eſſoigne *De malo lecti*, and alſo after the yeare of the languiſhing, and it lyeth before appearance, and after appearance, except in foure Aſſizes; and

and where it lyeth in Actions it holdeth in Warranties.

This common Essoigne is not allowable in the cases aforesaid, but once after the Parties have joyned issue, nor after the Parties have agreed to appeare without Essoigne, nor where a Bishop is commanded that he have or cause such a Person to appeare, nor there where many claime by one right, or are Tenants of the same right, nor to a man and his Wife, nor to all the paeceners; but if a man dyeth without Heire after the Writ purchased and brought, the Writ is thereby abateable, because at the day of the date the Plaintiffe had no Action against the other parceners which are alive, as to that of the Party.

This common Essoigne lyeth as well for Infants where they are impleaded of their Lands, as for men of full age.

And as the same is allowed to the Tenant, so is it warranted where no sickness is adjudged; this Essoigne is allowable from day to day, according to the common Adjournments in Writs of right, till the sickness be Judged, if the Tenant rise not before from his sickness; nevertheless none can doe it in such a case if not with the Plaintiffes leave, or by the command of the King if the Plaintiffe will not give him leave.

This Essoigne holdeth in the Writ of Droit Potent sent to the Lord of the Mannour, and in a Writ of Droit close of Lands

Lands holden of the Kings in *Capite*, and in the Writ of Cuſtomes and Services, after that the deforceor hath pleaded, and ſaid that the Battaile or the Grand Aſſize may be joyned.

The Eſſoigne *De malo Lecti* is in Court for two yeares when the ſickneſſe turnes to weakneſſe, this Eſſoinge lyeth not for the Plaintiffe; and after the ſickneſſe adjudged, it is adjournable by a yeare of reſpite to the Court of London.

Weakeneſſe lyeth not in any Writ of right after appearance, but where Battaile may be joyned, or the Grand Aſſize.

This Eſſoigne *De malo Lecti* was never allowable to any Atturney, nor to any but thoſe who had a Warrant before the common Eſſoigne caſt by the Tenant, nor to any after the weakeneſſe adjudged, nor without riſing; nor in *Juſtieies*, nor in the Writs *De quo jure*, nor *De rationabilibus diviſis*, nor *Quo warranto*, nor Cuſtomes and Services before that the Court be certified that Battaile might be joyned, or the grand Aſſize.

This Eſſoigne of *De malo veniendi* is called *De malo villa*, and this lyeth in caſe where one appeareth the firſt day in Judgement, and is ſuddenly taken with ſickneſſe in the Town, that he cannot the next day appeare in Court.

This Eſſoigne may be caſt the ſecond

day by one, the third day by another, and the fourth day by a third; in which case the Judge ought to receive the Atturnies of those who are sicke, but this Essoigne lyeth not but there where the Essoigne *De malo lecti* lyeth.

CHAP. II.

SECT. 31.

Of Atturnies.

BEfore a Plea put into Court by Essoignes by Attachment, or by appearance of the Parties, none is to be received by Atturney, no more then a Plea is removeable out of Court into a higher Court, where the Plaint or the Writ is not brought, nor any is to be received by Atturney in a Plea which was, nor in a Plea which shall be, but onely in a Plea which is Pendant in the County Court, or else-where, or is brought by the Kings Writ, and this Plea be afterwards removed into a higher Court. By this removing the Atturney is not removed, for no Atturney is removeable unlesse he whose Atturney is come into the Court in proper person and remove him, if not in case where one hath generall Atturnies, for generall Atturnies may appoint speciall, and remove them, nor

nor any can receive Attornies after the Plea brought but the King, or other warranted by a ſpeciall Writ, if not in the preſence of the parties.

All may be Attornies which the Law will permit; Women may not be Attornies, nor Infants, nor Villaines, nor any who are in Cuſtody, or any other who is not free of himſelfe, nor any who is criminous, nor any who are not ſworne to the King, nor any in any perſonall Action, nor in an Accompt, nor in *Nativo habendo*; Plaintiffes notwithſtanding they have Attornies, in perſonall Actions are not to appeare, nor anſwer in Judgement by no Attorney, but he diſſeiſeth his Clyent when he doth it.

The

The Contents of the Third Chapter.

OF *Exceptions.*
What is Exception, and the diviſion and order of excepting.
Exceptions Dilatories.
Of Exception of Clergy.
Exception of Bigamy.
Exception of the power of the Judge.
Exception of time.
Exception of place.
Exception to the perſon of the Plaintiffe.
Exception of Priſon, and of Ward.
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Of

Of Purprestures.
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Of Obligation.
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Homage.
Fealty annexed to Homage,
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Of finall Accords.

CHAP.

CHAP. III.

Sect. 1.

Of Exceptions.

IT behoveth the Defendant to Answer the Plaintiffes Declaration, and because the people commonly know not all the Exceptions in Pleadings; Countors are necessary, who know how to advance and defend their Clyents Causes according to the rules of Law, and the Costoms of the Realm; and the more needfull are they to defend them in Indictments, and Appeales of Felony, then in personall or veniall Causes; and the better to helpe our memory, which every day inclineth to forgetfulnesse, it is necessary to shew what is an Exception, and the division of it, and the order of Excepting, or Pleading; for some account them guilty who Plead not, or Plead ill, or not sufficiently; for example, If any one Vouch one to warranty, and Judgement passe (if he tell not the yeare, or before what Judges the Judgement passed) it is as if he had said nothing; and so of other Cases, and although a Plea be requisite, nevertheless every one is not received to plead; for some are admitted to

Plead

Plead without Tutors in all Actions, and some not, but in Felonies.

Every one may Answer without a Tutor who is not forbidden by the Law.

The Law forbiddeth Married women to Answer without their Husbands, but then we are to put a difference in the Cases; for if she be within the age of one and twenty yeares, she is not admitted to Plead in any Case without her Husband, but in Case where her dis-inheriting, or that which doth amount to as much doth appeare by the malice, or negligence of her Husband; & if she be of full age, then she shall so Answer alone in cases of death and Felony; and so it is of men within the order of Religion, and of Villaines, and of all those who are in Custody, and are not delivered.

CHAP. III.

SECT. 2.

What Exception is, and the order of Exception, or Plea.

A Plea or Exception is a thing alleadged for Answer, either to delay or barre the Action.

And there are two manner of Exceptions, Dillatories, and Peremptories.

The order to Plead is such, that the Peremptory Plea is in the highest degree, or the Dillatory may have a recourse to

the Peremptory, but not *è contra.* And of Dillatories some are principall, and some are secondary, and from the secondaries there is no recourse to the principalls, and according to their degrees are they put in, partly to helpe our remembrance.

And some Exceptions are in Counts, in Replications, and Re-joynders, and so forth untill the truth be cleared in the proceedings of the Pleas, whereby one may surely come to give cleare Judgements.

Voucher to warranty lyeth not in personall Actions, although that averrements by Record, and Minements, and Witnesses availeth.

CHAP. III.

SECT. 3.

Exceptions Dillatories.

THere are many Dillatory Exceptions, whereof the first is to the Judge, and that many waies; one unto the power of the Judge, and that may be in two kinds, by reason of the two kinds of Jurisdictions, or because the King or his Iudge Deligate hath no Power, or Countance in the Cause, as it is of the person of a Clerke, by reason of the Priviledges of the Church; or because the ordinary Iudge

Iudge hath not power or Counſans of a thing done out of his Iuriſdiction, nor any one within a Franchiſe of a thing done in guildable, nor Kings, nor thoſe of one Country, or of one Land, of things done in another Land or Country.

CHAP. III.

Sect. 4

Of Exception of Clergy.

For the Priviledge of Clergy, as if a Clerke be ordered in Court before a Lay Iudge to Anſwer to an Action for a perſonall Treſpaſſe, and eſpecially in a Caſe criminall and mortall Plead that he is a Clerke, the Iudge hath no further Counſans of the Cauſe, for the Church is ſo enfranchiſed, that no Lay Iudge can have Iuriſdiction over a Clerke, though the Clerke will acknowledge him for his Iudge; and in ſuch a caſe he is without delay to be delivered to his Ordinary.

Nevertheleſſe to give Actions to Plaintiffes againſt the Acceſſories in Appeales and Indictments, it belongeth to the Iudge *Ex officio* to enquire by the Oathes of honeſt men, in the preſence of the Clerke whether he be guilty or not, and if he be guilty thereof, then he is without delay to be delivered to his Ordi-

nary, and the Plaintiffe shall Sue against the Accessories in the Kings Court, and in the Spirituall Court against the Clerke, and the Clerke after his due Purgation made, shall without delay have all his lands and moveables delivered to him.

CHAP. III.

SECT. 5.

Replication of Bigamy.

THe Exception of Clergy is sometimes Counterpleadable by a Replication of Bigamy in this manner.

Sir, he ought not to enjoy the benefit of this Privilledge, for he hath forfeited the same by the sin of Bigamy, as he who hath Married a widow, or many wives; and note that Matrimony is the lawfull Order of joyning together of a Christian man and woman by their affents; and as of the Diety and Humanity of Christ there is made an undissolveable Unity; so was Matrimony, and according to such Unity was such coupling found to be, and therefore none can remaine in that Unity who takes to himselfe a Plurality; and of a Plurality, ariseth this offence of Bigamy, which offence draweth Clerkes nearer the Lay Power.

And note that Bigamy may be two waies; one by a Plurality of Wives, as he

he who Marrieth two wives or more, the one after the death of the other, or outliving the other, the other is plurality of Husbands as well as wives, as it is of a widow who suffereth her selfe to be Married to another man, whether her widowhood came by the death of her Husband, or by Divorce; and because it belongeth to say in what point a Clerke is Bigamus, the Bigamy is triable in the Lay Court; if nevertheless the Jury doubt thereof, then the Ordinary is to certifie the same at the Command of the King, as in the case of Matrimony when it is denyed. On the other side, a Clerke is incounterable by other Replications, as he is for being a murderer, or a notorious lyer, or of such a condition as the Church is not to protect him against the Kings Peace.

CHAP. III.

SECT. 6.

Exception to the Power of the Judge.

AGainst the power of the Judge the Defendant may help himself by other Dillatory Pleas in this manner; Sir, I demand the sight and the hearing of the Commission, whereby you claime Jurisdiction over me; and if the Judge doe not deny it, or cannot shew it (notwithstanding that no Judge Deligate is compelable to shew his power) yet may the Party plead thus; Sir, I appeale from this Commission, be-

cause it maketh no mention of the Cause for which I was brought to Judgement, or not of that point; Or because you have no Counsans in such a point; or because it is vicious, and that may be divers waies, as if it be not sealed with the Kings Seale of the Chancery, for none is tyed to yeeld obedience according to the Lawes and Customes of the Realme to the Kings Privy Seale, or to the Seale of the Exchequer, nor unto any other Seale, but onely to the Seale which is assigned to be known of the common people, and especially in Jurisdictions and Originall Writs, if not for the King only. Or it may be vicious because the Seale is counterfeited or falsified, or because the King is not named in the Writ, he not being out of the Kingdome, nor in Ward; or because the Writ containeth Summons in the Action where it is personall, or Attachment where the Action is mixt or reall, or because the Seale is not fastned to the Parchment, but one may remove it, and take it from it at his pleasure; Or because the Writ was brought too late, or too soone; Or because it hath rasure, or enterlining, and diversity of hands, and of words, or false Latine; Or because the Writ is written upon Paper, or Parchment which is forbidden; Or for default found in the Writ, as the omission or transposition of a word, sillable, or clause, as it is of abatable Writs; Or because the King dyed before the Writ was brought, or because the Writ is false in the

in the day of the date, or because the Commission requireth the association of one who is not present; Or because the Writ was never sealed, or because the fact was not done within his Jurisdiction, or in a place not there determinable, or because the Iudge hath not power or Cognisance either of the quality or the quantity of the thing.

CHAP. III.
Sect. 7.

Exception to the Person of the Judge.

ALthough the Writ be good, and the Power be sufficient, yet there holds Dillatory Exceptions to the Person of the Iudge (as it is said) of such Persons who cannot be Iudges.

CHAP. III.
Sect. 8.

Exception to the time.

OTher Dillatories there are of time, of place, of houres, of manners, &c.

And note, there are three manner of times exempted from Pleas, in which no Parties sit in Courts and give Iudgements,

whereof two are by Law, and the other at the Will of the King.

One time containeth two Moneths, *viz. August*, and *September*, which are assigned to gather in the fruits of Corne, &c.

The other times containeth the Feasts, and the Sundaies, which are appointed Festivalls for the honouring of God, and the Saints, which Feasts are these:

1 The day of the birth of Christ, of St. *Stephen*, of St. *Silvester*, and the Epiphany, and the Purification of our Lady, Easter weeke, of the Rogations, which containe three daies, of the Assention, of Pentecost, of the Nativity of St. *John* the *Baptist*, of the twelve Apostles, of St, *Lawrence*, and of the Assumption of the Mother of God, and her Nativity, of St. *Michael*, and of all Saints, and of St. *Martin*, with all such Feasts which all Bishops hold Festivalls in their Bishopricks, for that they are Canonized; besides these the daies of Reliques, of the Anunciation of the Mother of God, and of her Conception, and of the invention of the Crosse.

And note that whereas God Commanded to keepe holy the Sabbath day; it was Ordained, after the Resurrection, that we keepe holy the Sabbath Daies.

The third time is forbidden by the Kings Proclamation, of Houres may arise Dillatories, for after the houre of Noone, or in the Night, no Plea is to be holden.

CHAP.

CHAP. III.

SECT. 9.

Exception of the place.

OF the manner arise Dillatorie, for in Riding, nor in Walking, nor in Tavernes, nor else where, but in knowne places for a Consistory can any Court be holden.

CHAP. III.

SECT. 10.

Exception to the Person of the Plaintiffe.

OTher Exceptions Dillatories arise from the Persons of some Plaintiffes, as it is of those Persons who are rebukeable of accusations. Other Exceptions Dillatories rise from the Persons of the Pleaders, or of the Atturnies, or of the Essoigners, for none can doe that by his Atturney which himselfe cannot doe, nor can any be an Essoigner, Atturney, or Pleader who may not be a Plaintiffe.

CHAP.

CHAP. III.

SECT. II.

Exception of Person, and of his Custody.

OR he may take Exception against his owne Person, and say that he is not within the Kings Power, or if he be imprisoned for a greater offence, or Appealed, or Indicted of Crime, or of a higher Crime; Or he may say, that he is not bound to Answer thereunto, for as much as he is not brought to Judgement by a right course, which willeth that no man may be attached by his body, when he is distreyneable by his Lands or other goods, if not for a personall offence.

Or he may say, that he is not tyed to Answer to any Action which toucheth losse of life or member, or right of property, untill he be of the full age of one and twenty yeares or more; and there are other Dilatories of the Persons of the Answerers which appeare before.

CHAP.

CHAP. III.

SECT. 12.

Exception of Summons.

IN Pleas of Summons he may say, he ought not to Answer, because the Plaintiffe holdeth no Suit of Distresse; nor hath any other manner of proofe present; Or because the Plaintiffe hath not found Sureties to pursue his Plaint, or because he was not summoned, or not reasonably summoned, or that he received the Summons by no Free-man, or but by one Freeman; Or because he was summoned too late, or because he was never summoned what thing to answer to, or because he was not summoned against the Plaintiffe.

CHAP. III.

SECT. 13.

Exceptions of vicious Counts.

AS Writs which are vicious are abateable, so also are vicious Appeales; as if the Appeales be not brought within the yeare after the Felony done, or not before the Coroner, or not in the County where the offence was done, or not in a right

right place, or for variance, or for Omission, or Interuption, or becauſe the Plaintiffe is batred againſt others in the ſame Appeale.

Sometimes it happeneth that the thing which is robbed or ſtolne is found in the poſſeſſion of a true man, againſt whom the Owner of the property, or of the poſſeſſion frameth his Appeale, as he who is a Robber of another, in which caſe there is a difference, for if it be found that ſuch a thing was given, ſold, or delivered to him without Colluſion, in ſuch caſe the poſſeſſor is acquitted, or at leaſt Bayleable untill the next comming of the Iuſtices; and when the Iuſtices come, the firſt poſſeſſor thereof is to be Arraigned, and he may ſhew how it came to him; nevertheleſſe if he would vouch one to warrant it he cannot, nor deny the Title of his poſſeſſion, but in the name of Voucher he may ſay, that it came to him by lawfull Title, as that he bought it in ſuch a Market, or in ſuch a place, without mentioning of whom; and the Sheriffe is thereupon to cauſe a Jury to be impannelled, and if the Anſwer be found true, then he is acquitted, and if not, then to be condemned as before, as if the Plaintiffe had proved the felony.

And if any one appeare, and juſtifie the thing to be his, he is not to be received as a Party, but the Cauſe is firſt to be tryed betwixt the two firſt, & afterwards he may make the eſtranger a Party if he will; and

if

if the caſe be that the buying was within a place within a Franchiſe, and the Sheriffe returne, that he cannot execute the Writ by reaſon of the Franchiſe of ſuch a man, or of ſuch a place; in ſuch caſe the Sheriffe is to be Commanded that he forbeare not by reaſon of the Franchiſe, but that he enter and execute the Writ.

And if the Poſſeſſor ſaith, That he came to the thing from a man certaine, and he be preſent, and will maintaine the ſame without Colluſion, he is to be admitted thereunto, and the other is to be diſcharged; and if he deny the Contract, this affirmative, and this negative are tryable by Battaile or Jury; nevertheleſſe at the Kings Suit the poſſeſſor ought make title to the Poſſeſſion, or cleare himſelfe thereof; for two things are neceſſary, Conſcience for us, and Fame againſt others.

And that which is ſaid of making of Title to the poſſeſſion of things, in Caſe where a falſe Writ, or falſe Mony, or Larcine, or thing loſt, or Eſtrey, or other hurt is found at the Kings Suit, although that the laſt profeſſor acquit himſelfe of the felony; if the Plainliffe nevertheleſſe prove the thing to be his, as of his poſſeſſion, or ſtoll en from another, or otherwiſe loſt, the Law is, that he recover the thing without any payment for it.

Or he may have Exception Dillatory to a vicious Deed, for varience betwixt the words of the Writ and the nature of the Action, and the Count, as if he have omitted

omitted to Charge me, or if he Charge that in the Count which was not to be in that Action, as felony in a veniall Action.

And as the Defendant hath a Dilatory Exception to abate a vicious Count, in like manner hath the Plaintiffe a Replication against the Defendant upon a faulty Answer; but because none is to be Judged for not Answering in Appeales of Felony, it is sufficient for every one to deny the fellony generally, though he Answer not particularly to every word mentioned in the Appeale.

And in Cases venialls, where the Defendants say nothing in excuse of that which is offered against them in Judgement, they are to be adjudged and Condemned as not Answering at all; in the same manner is it where one Answereth not duly, or insufficiently.

CHAP. III.

SECT. 14.

Exception to Approvers.

TO an Approver one may thus Answer; Sir, I am a true man, sworne to the King, and within a Franck-pledge; and this Approver is a Felon attainted by his owne confession, and out of the Kings protection, & by consequence out of the Kings Peace.

Peace, whereby he hath lost his free voice, and lost every right, and every Action, so as he is not to be admitted in any action, no more then a man who is Out-lawed by Judgement.

Or he may plead, that he ought not to Answer him, because he did not Appeale him in his first Appeale, or not before the Coroners, and if the Approver cannot helpe himselfe by this Replication, as to say, that he is not any way out of the Kings protection, the Defendant is bound to Answer him, but he is not to be delivered to the Fee-pledges where he is in the Decenry, or to other Main-prisors untill he be appealed, or indicted.

CHAP. III.

Sect. 15.

Exceptions of Indictments.

THese Exceptions hold to Indictments, Sir, I demand sight of the Indictment, whereby I may take exceptions against the persons of the Enditors, or to the forme of the Indictment, for no Villaine can indite any man.

Or if the Indictment be not made by the whole dozen of Free-men, or by others who cannot indict any man.

Or if the Indictment be not sealed with the Seale of the twelve Jurours, or that it is not the record of Judges authorized there-

thereunto; Or if the Indictment hath not been within the yeare, or by people of credit, and of good fame, no man is bound to answer to such an indictment.

Nor if the Indictment hath not been made within the Neighbour-hood of the same County, also if the Indictment be generall, for a generall slander defameth no man, nor is he compelled to answer thereunto; as if the Indictment be such a one is a Murderer, or a Thiefe, or wicked, without alleadging any particular offence therein, for to the common fame of the people an Indictment ought to give no credit or beleefe.

Or he may say, that the Iustices went the Eyre after the felony done, where nothing was moved of this felony.

CHAP. III.

SECT. 16.

An Answer to Treason.

Darling here denies all Treasons and Felonies, and whatsoever is against the Kings Peace.

And as to the consideration he may say thus; Sir, notwithstanding the joynt Alliance betwixt us by Homage sometimes

times before this time, nevertheleſſe when he counted that I ſhould commit this Treaſon, I had yeelded up to him all the Lands which I held of him, or I loſt them by Judgement, or by Diſſeiſin, which the Plaintiffe did to me, or he appointed them to come to others; in which caſe the felony is barred, and the Plaintiffe is condemnable.

And as to the conſideration of preſent Fealty he may ſay, that this Alliance the Plaintiffe forfeited againſt him in ſuch a point, or ſuch a point; ſuch Fealty iſſued out of ſuch Lands whereof the Defendant was not then Tenant, neither in demeane nor in ſervice.

And to the Alliance of Courteſie he may ſay, that ſuch benefit was not to continue but untill a time paſt before the time named in the Appeale, for afterwards he paid him nothing of ſuch Penſion, or other Courteſie but by Iudgement had againſt him, and in deſpite of him; Or thus, before the time named in the Appeale he yeelded up to him his deed of the Penſion, or releaſed the ſame unto him, or quitclaimed the ſame whereby the Alliance was deſtroyed.

CHAP. III.
Sect. 17.

TO Burning he may say, that the mischiefe came by mischance, and not of a premeditated felon.

CHAP. III.
Sect. 18.

Murder.

TO an Appeale of Murder he may plead, that the Action belongeth not to such women as the wife of the Plaintiffe, because he was not killed in her armes, or in her seisin. Or thus, Sir, the Plaintiffe is to have no Action, for as much as there is one nearer of blood who hath brought his Appeale, and is a person of ability so to doe; Or he may say, that he is not bounden to Answer in *England* unto an Act done out of the Realme, if the thing concerne not the Kings right, as his Person, or his Inheritance; nor in a Priviledged place, where the Kings Writ runneth not of an Act done in a forraigne place, nor *è contra* in a Franchise, of an Act done in Guildable; Or he may say, that he did it not feloniously, but by mischance, or by a lawfull Judgement: or thus, not against the Peace as a Fugitive, or as a known Felon, or as one who was not within Allegiance to the King at the time of the killing.

CHAP.

CHAP. III.

SECT. 19.

TO an Appeale of Robbery or of Larcine he may plead, that he wrongfully bringeth this Appeale, for as much as the Plaintiffe brought an Action of Treſpaſſe againſt the ſame Perſons of the ſame before ſuch Iudges; and if any one would cover his Larcine by colour of Avowry for an eſtray, or a Waiſe, in ſuch caſe it behooveth that he ſhew forth a Title allowable for ſuch a franchiſe; but this exception is counterpleadable by this peremptory replication; Sir, ſuch Avowry ought not to be of any force, becauſe he preſently carried away the Eſtray, or Waiſe ſo found, or changed it, or ſold it, or killed it, or put it out of the View, or from the knowledge of the neighbour-hood, whereas he ought to have publikely cried it in three Markets, and Monaſteries next adjoyning, and keepe it in a common place for a whole yeare.

To the exception of Diſtreſſe holds this Replication; Sir, ſuch Avowry ought not availe him, becauſe he was not a knowne Bayliff in ſuch a Hundred; or becauſe he did not any thing in the manner of a diſtreſſe, as not in a due time, nor had any warrant, but tooke it in the night time, or in ſuch other manner felonioully robbed him, and ſtole, &c. and in the like manner may a Replication hold againſt a robbery made by colour of diſſeiſin.

CHAP. III.
SECT. 20.

Of Burglary.

TO Burglary he may say, That he entred into the Tenements without doing any Felony, and not against the Peace, as in to his owne demeane, and free-hold.

CHAP. III.
SECT. 21.

Of Rape.

IN Appeale of Rape he may deny the Felony, and say that he ravished not her against her will, but that she assented, and that appeareth because she conceived by him at the same time, and there is no presumption that she was ravished against her will by fouling of her Garments, nor shedding of blood, nor Hue and Cry made, or other manner of violence offered.

CHAP. III.
SECT. 22.

Of Imprisonment.

TO the Appeale of Imprisonment he may say, that he did it by force of a rightfull Judgement of such a Iudge; but to that Plea is this Replication good, that

that after there came a Warrant to him to deliver him, he kept him in prison for the time named in the Appeale.

CHAP. III.
Sect. 23.

Of Mayhem and Wounding.

IN Mayhem he may demand the View thereof, for he cannot lawfully complaine when there is no Mayhem to be Iudged of; and of Appeale of Wounding in the same manner. By the death of the King all Pleas are suspended, all Goales opened, no Iudge, Bayliffe, or other Officer ought to entermeddle therewith for want of watrant, and all Out-lawes, and all Waives, and those who have forjured the Realme, and all banished Persons used then to returne, except those who were exiled and banished for ever; and if any recovered before for that he could not have Dett, if he were not justified to the Peace; and if he be brought to Iudgement, and if he be accused of Outlawry, he may say that he is discharged of the Outlawry by the Kings grant; Or he may say that the Outlawry ought not to prejudice him because he was under the age of 21. yeares at the time of the Outlawry, and therefore that he was not Outlawed for the felony.

Or because the felony was not done in such a County, or because he was not

Out-lawed in *England*, or not within the Kings Dominion where the Writ runneth; for an Outlawry pronounced against a man in the Bishoprick of *Durham*, or elsewhere in the Land where the Kings Writ doth not run, shall prejudice as one in the Land where the Kings Writ runneth, *Nec è contra*.

Or because the felony was not done in the time of this King, or not since the last Eyre in that County; Or because the Processe of the Outlawry was false, by a false Warrant, or without any Warrant, or because he lay sicke, and was Essoigned *De malo lecti*, or because he is alive for whose death he was Out-lawed; or because he was Imprisoned the day of the Outlawry, or because he was in the Kings service in the Holy Land, or within the Realm for the profit of the Commonwealth.

Or because he had the Kings Protection, or because he was a Mad-man, or an Idiot, or Deafe, or Dumbe, or professed in Religion, in which cases if he pray to be received to Answer, he is to be received.

And the Plaintiffe was to be demanded, and it was to be proclaimed, that if any one could shew why he should not be enlarged, that he appeared at a certaine day.

All Parties in Iudgement are necessary to be present, and they are to have Oyer of the Writs, of the Originall, the Plaintiffes Commission, the quantity or the quality

lity of his plaint. And the Disseisor or their Bayliffes, every one of them for himselfe may say in this manner, he may Answer and say for himselfe, that he hath not done any wrong or disseisin, nor hath any thing in the Tenements put in the Plaint, and he may so Answer, and so of others till it come to the Tenant in whose name the disseisin was; and he may Answer and say, that he is not in by disseisin, but is in by *D.* who infeoffed him who is not named in the Writ; and it may be that *D.* entred by *E.* and so there may be many, according to divers Feoffments betwixt the first Disseisor and the Tenant, in which cases no Voucher to warranty holdeth place for a Personall Trespasse, and therefore every one is well to looke not to make a Contract of a vicious thing, and that he take Caution, and such Surety in the Contract that he may have a recourse to recover if he lose the thing; and therefore the Lords used so keepe their Mannours that none could enter by Intrusion, Disseisin, or by other vicious bargaines, nor otherwise unlesse the bargaines were entred in their full Courts, whereby the Lords could not have received their enemies into their Mannours, nor have taken their Homage against their wills, nor any used to enter before they had found Sureties to restore to the Purchasor or his Heires the value of the thing, if by rightfull Iudgement it belonged to him after his

thing loſt for the offence of Alienation, or for his power of this warranty.

To the principall Diſſeiſor it belongeth to have a regard, if the Plaintiffe put more into his Plaint, that he Anſwer not but to that which he may avowe; he may ſay, that there is varience betwixt the Originall and the Commiſſion; or that the Writ is vicious, as it is in miſpriſion of names, or ſir-names.

Of names, as *Renand* for *Harrand*, *Margery* for *Margaret*, and ſuch like; or he may ſay the Writ is faulty for want of Sirnames, or if the names of Dignity be omitted; as if a Biſhop, Abbot, Prior, or other be diſſeiſed of any thing in the right of his Dignity, and he makes his plaint ſimply of a Treſpaſſe done onely to his Perſon, and not to his Church or Dignity in this manner; *A.* complaines to you, whereas he ought thus to make his Plaint. *A* Biſhop of London, and ſo it is of Diſſeiſors; Or he may ſay that the Writ is vicious, becauſe the Plaintiffe who is ſolely in the Plaint hath no cauſe of Action, but with another who is not named in the Writ.

Or it may be faulty if it be not contained in the Writ, *Diſſeiſivit eum*, where it ought to be *Diſſeiſivit eam*, or *eos*, where it ſhould be *eum* or *eam*, *et è contra*.

It is contained in the Writ, (wrongfully and without Judgement) &c. and to that one may plead not wrongfully, but rightfully denying any other force.

And note that one may be diſſeiſed wrong-

wrongfully and without Judgement, and wrongfully and by Judgement; as it is of thoſe who are diſſeiſed of their Free-holds by the Judges who have no Iuriſdiction, and nevertheleſſe adjudge men to be put out of their Poſſeſſions, and one may be rightfully and without Iudgement, as in the caſes aforeſaid; and further rightfully and by Iudgement, and thereof riſe Exceptions, and ſo not without Iudgement and yet by Iudgement, and that may be either by the Iudgement of Iudges Commiſſaries, or Iudges Ordinaries as were the Suitors.

Againe, Writs may be vicious by miſpriſion of the names of the Townes, as if a Hamlet be named for a Towne, or if the Towne be not right named, or if the Towne be not diſtinguiſhed where there are two Townes of like name in the ſame County.

And from theſe words (after the Term) may ariſe Exceptions; as if not the Term, yet he might have diſtreyned for, or the Arrerages of his Penſon, or ſpeciall Obligation, exceptthat he had any wrong.

Or becauſe another Writ for the ſame Action is yet depending betwixt the ſame Parties, or he may ſay that he wrongfully complaines, whereas at his one Plaint he loſt the ſame Tenement by a lawfull Iudgement againſt him; Or that he hath releaſed or quit-claimed all his Right, or to the ſame purpoſe, or otherwiſe rattified his eſtate, or becauſe at another

another time he withdrew his Action before ſuch Iudges.

For the helping of the peoples memories are Eſcripts, Charters, and Minuments very neceſſary to teſtifie the Conditions & the points of Contracts, for by the Statute of *Lenfred*, who ordained that one might deny Contracts by waging of his Law, and that Plaintiffes prove their Writings, otherwiſe their Charters which are not denied, & not to be ſhewed by Iurours in *England* for Forraigne Contracts, or of places Enfranchiſed, or elſewhere, where the Kings Writs run not by Coppies, or Collation of the Seales of others, or by Iurours, or by Battaile, according to the Plaintiffes Action.

To give matter and way to Exceptions in the aide of thoſe who are to Anſwer, one is to know the end and limitation of Actions, and of Pleas, ſo that the Pleas may have an end, and therefore Preſcriptions were ordained, whereof *Thurmond* Ordained, That Criminall Actions for revenge ſhould ceaſe at the yeares end, if they were not brought before, and the ſame time he appointed in all Actions for Wrecks, Eſtraies, Waife, and of things loſt; in Perſonall Actions Venialls be appointed the Terme after the laſt Eyre in thoſe parts; in reall Actions and Mixt he appointed forty yeares, nevertheleſſe as to the King in the right of his Crowne, and to a Francke eſtate *Nullum tempus occurrit.* 10

To an Action of Accompt he may ſay, that he never was his Receiver, nor Adminiſtrator of his goods, nor of his monies, whereby he was bound to render him any Accompt, and that he received them of him under the title of Buying, whereof he gave him a writing to ſurrender at a certain time. Or thus, notwithſtanding he was his Receiver or Adminiſtrator in a Franchiſe, or elſewhere out of the Realme, or in a Priviledged place, whereby he is not bounden to give him an Accompt within the Realme, nor where the Kings Writ runneth, or in guildable, or *è contra*.

Or he may ſay that the Writ is vicious by falſe ſuppoſition, and falſly ſuppoſeth the Defendant to be a Fugitive, and beſides not a Free-holder within his Bayllwick to whom the Writ is ſent.

Or he is not bound to yeeld him any Accompt for that he was never Receiver of his owne hand, or of his daily Receipt he gave him a daily Accompt; or that he diſburſed nothing, nor bought any thing but in the Plaintiffes ſight, or of ſome of his; Or for that the Plaintiffe by Tallies and other Roles hath diſcharged him of ſo much in value as the Defendant was to give an Accompt for.

Or becauſe he hath made him an Acquittance thereof, or becauſe he was never Guardian of his Inheritance as his Guardian, but was Guardian during the time of the thing for his owne proper uſe, or it belongeth to him that is Guardian of the

the Lands in the right of his Fee whether it be Socage or other.

To the Action of Villinage he may say, That he is a Free-man, and that he hath proved the same at another time by a Writ of *Libertate probanda*, that he is quit from any Challenge by the Plaintiffe for ever, if he have no reasonable Counter-plea against it.

And as to the seisin of Villaine Services he may say, That he did those Services wrongfully, by Extortion, and duresse of him and his Bayliffes, or for the service of Villinage and Villaine Land which he held of him, and not by service of blood; and there are two other things, the one that if the Defendant can shew a free Stocke of his Ancestours, either in the conception or in the birth, the Defendant hath alwaies been accounted for a Free-man, although his Father, Mother, Brother and Cousens, and all his Parentage acknowledge themselves to be the Plaintiffes Villaines, and doe testifie the Defendant to be a Villaine.

The other thing to be noted is, That no more then the long Tenure of Copy-hold Land maketh a Free-man a Villaine, the long Tenures of Free-hold maketh a Villaine a Free-man; for freedome is never lost by prescription of time.

There are many manner of prooffs by the same Pleas, sometimes by Rewards, sometimes by Battaile, sometimes by Witnesses, sometimes by the Confessions of the Adverse parties.

1 By Record, as in caſe where the parties doe agree together upon ſome enrolement, or to the Iudgement of ſome Iudge Ordinary or Aſſigned.

2 By Battaile, for upon warrant of the Combate which the Iudges tooke betwixt *David* for the people of *Iſrael* of the one party, and *Goliah* for the *Philiſtims* on the other party, is the uſage of Battaile allowable by the Law in *England*, ſo that the proofe of Felony and other caſes is done by combate of two according to the diverſities of the Actions; for as there is a perſonall Action and a reall, ſo there is a perſonall Combate and a reall; perſonall in perſonall Actions, reall in realls; and theſe Combates are differing in this, that in a Perſonall Combate for Felony none can combate for another, nevertheleſſe in Actions, Perſonalls, Venials, it is lawfull for the Plaintiffes to make their Battailes by their bodies, or by loyall Witneſſes, as in the right of reall Combates, becauſe that none can be Witneſſe for himſelfe; and no man is bound to diſcover his reall right, and although they make theſe Combates for the Plaintiffes by Witneſſes, the Defendants nevertheleſſe may defend their owne right by their owne bodies, or by the bodies of their Free-men; and further they differ, for as much as in Appeales none can Combate for another, but it is otherwiſe in reall Actions, for if that one of the Parties be hurt ſo as he cannot Combate, his eldeſt

eldeſt Son may wage the Battaile for him.

The Battaile of two men ſufficeth to declare the truth, ſo that the Victory is holden for truth.

Combates are made in many other Caſes then in Felonies; for if a man hath done any falſity to me in deed, or in word, whereof he is Appealed or Impeached in Judgement, if he deny it, it is lawfull for me to prove the Action either by Jury, or by my Body, or by the Body of one Witneſſe; and if it be of the falſe Judgement of many, then the proofe belongeth only againſt the pronouncer of the Judgement for the whole Court.

And ſo it is in caſe where you deny your Gift, Baylement, Pledges, Deed, Seale, or other manner of Contract, or the words which you ſpake, or the deed which you did.

Nevertheleſſe you are to diſtinguiſh of the qualities of the Cauſes, for in Appeales of Felony none can Combate for another as is ſaid but in Veniall Cauſes, although one be killed in the Battaile he committeth no Murder, but onely thoſe vanquiſhed, or their Clyents for them ſhall tender to the Combitants vanquiſhing forty ſhillings in name of Cowardize, beſides the Judgement upon the principall.

And in caſe where Battaile could not be joyned, nor there was no Witneſſe, the people in perſonall Actions uſed to helpe themſelves by a Miracle of God

in

in this manner; If the Defendant were a woman, or of ſuch a condition that ſhe could not joyne Battaile, and the Plaintiffe had no Witneſſe to prove his Action, then the Defendant might cleare her credit by the Miracle of God, or leave the proofe to the Plaintiffe; and in the contrary caſe the proofe onely belonged to the Plaintiffe.

At the day of the proofe, or of the purgation, after the *Benediction*, and the *Malediction* of the Prieſt, cloathed with the holy Garments of the Maſſe, and after the parties Oathes one uſed to keepe the party; and he was to carry in his hand a peece of burning Iron if he were a Free-man, or put his hand or his foote in boyling water; if he were not Free, or to doe ſome ſuch thing which were impoſſible to doe without a Miracle from God; and if he was not hurt or blemiſhed the adverſe Party remained as attainted; but Chriſtianity ſuffered not that they be by ſuch wicked Arts cleared if one may otherwiſe avoid it.

Battaile is not to be joyned betwixt all people, for it is not to be joyned but betwixt equalls, nor yet betwixt all equalls, for not betwixt the Father and the Son, nor betwixt Women, or Infants, or Clerkes, or Parents, or Aſſignes.

Equalls are not a man and a woman, nor a Holy man, and an Excommunicate Perſon,

Perſon, nor a Chriſtian and an Infidell, nor a whole man and a ſicke, nor a man of good memory and a Mad-man, nor a wiſe man and a foole, nor a ſound man, nor a man mayhemed, nor a man and a childe, nor a Clerke and a Lay Perſon, nor a man profeſſed in Religion and a Secular man, nor a true-man and a Felon, nor a man within the Kings Alleagiance, and out of his Alleagiance, nor the Lord, and Tenant.

The ſmallneſſe alſo of the thing in demand doth hinder the Battaile, and many other Cauſes, as it appeareth in the Law of Fees; nevertheleſſe if thoſe who are not receiveable to joyn in Battaile will Combate if the Battaile be joyned betwixt them, it is no wrong to them who deſire it.

And if any one offereth himſelfe to Combate with one armed, who before was not brought by the Parties, and the adverſe Party demand Judgement for the default of his adverſary; as if he tendereth a Witneſſe who offereth himſelfe to decide the difference, and now he offereth to furniſh the Battaile by another who was not ſeene, nor heard in Court, and who cannot and ought not to try the Battaile; in ſuch caſe it belongeth to try the Exception as peremptory to the Action, if the Parties will not agree unto it.

CHAP

Chap. 3. Sect. 24.

Iuramentum Duelli.

AFter the Battaile joyned, adjourned, and presented, & the parties duly armed, First the defendant is to swear in this manner, Heare this you man who I hold by the hand, whom you call N. by name, that I did never kill such a one your Father, or said any such thing such a day, &c. So God me helpe; and the holy Evangallist.

Afterwards the plaintife ought to sweare in this manner, Heare you this man who I hold by the hand, That you who are called by your Right name N. are perjured, because that you such a day, &c. feloniously killed, &c. Or said such words, or did such a thing, &c.

Cap. 3. Sect. 25.

The Ordring of the Combatants.

AFter their Oathes be taken, it behoveth to looke that the parties be Armed according to the ancient usage of what condition soever they be, Knights or others.

The Auncient usage to bee Armed in all Cases of Combate is this; The Bodies are armed without *Seme cotu et balica*, And the heades and the necks and the hands uncovered, the backs thyes, Leggs and Feet armed which Iron, And each to have a shield of Iron, and a staffe iorned of one Assise. The Plaintife commeth into the List from the East, and the Defendant from the West, & on the place

they sweare in this manner. That they have not about them any Charme, nor deceit, nor have eat nor drunke any thing whereby the truth might be disturbed lessened, and the Law of the Divill enhaunced, So God them helpe and the holy Evangelists. Then Proclamation is made that none disturbe the Battaile, and Oyes is made, that there be no noise upon a Corporall punishment; And then they meet together, and if the defendant defend himselfe till after the Sun setting, and demand Judgment of the default of the Plaintife, In that case, Judgement shall be given for the defendant.

And if any fraud bee found with one of the parties, as to be privily armed, or there found or other thing unallowable, and the fraud be adjudged, that they be presently severed, and Judgment is presently to be given, and the vanquished is to acknowledge his offence in the hearing of the people, or speake the horrible word of Cravent in the name of *Cowardize*, or his left Foote to be disarmed and uncovered in signe of the Cowardize, and that Judgment be presently given against the Principall.

Cap. 3. Sect. 26.

AS to personall Trespas, in the Case this exception lyeth, Sir. Hee wrongfully impleadeth me of this Trespas, for the same man impleaded such or such before such Judges, in such a place of the

same

ſame Treſpas, and made me no partie to the ſuit, and for aſmuch as that hee then recovered by Iudgment his full damages againſt them named in his plaint, And this ſuit is not brought againſt mee, but to recover damages, and the Law is; That a man ſhall not recover double damages, I demand Judgment of his Action.

As to the Allienations and Occupations of Franchiſes Reals Appendants to the Crowne, a man ſhall not vouch thereinto warranty, nor demand the View, nor preſcribe in them, for of ſuch dignities none can helpe himſelfe by a plea of long preſcription, but ſuch avowries of long Continuance, are accounted rather preſcriptions of wrong, then lawfull exception, ſeing *nullum tempus occurrit Regi*, in his Franchiſes, but therein the King is like to an Enfant who can looſe nothing Although that for the perſonall treſpas for the uſing of them, it behoveth every one to Excuſe the wrong done to the King, or to any other, And that may be done two wayes, becauſe his Anceſtor whoſe heire he is, died ſeiſed theref, And ſo that he hath enjoyned the ſame by title of ſucceſſion as a thing annexed to his Land. Or becauſe hee of whom he purchaſed the Land to which the Franchiſe belongeth, was ſeiſed, as if hee were the poſſeſſor thereof. But this exception is counter-pleadable by this Replication, *Sir*, This Anowant cannot recover nor

excuſe himſelfe. For although that ſuch a one his Anceſtours was ſeiſed thereof, yet nevertheleſſe he could not grant away this Franchiſe, for the Kings never granted them ſo, that the Grantees could aſſigne them over, or make aſſignes of them.

CHAP. III.

Sect. 27.

Of Purpreſtures.

TO Purpreſtures if the Defendant may excuſe his wrong, he need not to anſwer thereunto without a Writ, no more then to the Action of Franchiſes; Not of his own wrong of Land or Fees, or of the appurtenances againſt any other then againſt the King; nor for the King but in his preſence. And if the wrong bee not originally, the Plaintiffes, he may vouch to warranty.

CHAP. III.

Sect. 28.

Of Treaſure.

TO the Alienation of Treaſure found, he may juſtifie it if hee bee priviledged or authorized ſo to doe. Or he may ſay; that he himſelfe put it there, or ſuch other who he remembreth; whereby no action accrued to the King.

CHAP.

CHAP. III.

SECT. 29.

Of VVrecks.

TO the Action of Wrecks he may Plead, That the King hath no Action for the ſame, becauſe the yeere is not yet paſt; and in the ſame manner is it of Eſtrayes, and of all other things found. Or becauſe that he knoweth to whom the goods belong who is alive. Or becauſe the goods were taken farre in the ſea, and were not caſt upon the land by the waves of the ſea.

CHAP. III.

SECT. 30.

Of Vſery.

TO Uſery hee may Plead, and ſweare that hee lent his Corne in Winter, to receive the ſame in *September*, according to the price as Corne ſhould bee ſould, which was dearer at that time; Or hee may ſweare, he lent his monyes to receive better money for the ſame for a yeare; and that the ſame is no Uſery.

CHAP. III.

SECT. 31.

Of Hunting.

TO an Action of Hunting, Chaſing, or Fiſhing, he may Plead, That he hath done no wrong, for it is his right to Hunt

there, for to Chase; or it is his common Piscary belonging to his Mannour of such a place, *&c.*

CHAP. III.

Sect 32.

Of Obligation.

As to Obligations (or Covenants) he may Plead, That notwithstanding that Obligation be his Deed, nevertheless it ought not to binde him, because it is vicious, or by false supposition; or because the Defendant never saw any money or other thing to the value; or it is by mixture of offence or ill faith, as it is said of vicious Contracts. Or he may Plead a Release or quit-claime; or that it was contracted that he might do waste, or that he hath done nothing to be adjudged waste; or because he hath taken nothing but reasonable estovers for house-boote or hay-boote, or he may claime Fee in the Tenement by any lawfull Title.

CHAP. III.

Sect. 33.

Of Attaint.

If any of the Parties say, That the Jurours have made a false oath, or any Jurry; an Action of Attaint lyeth, which is to be tried by 24 Jurours, so that every false witnesse be Attainted by two Juries. In which case it behoveth the Plaintiffe to have the first Verdict present under the Kings Seale, or of the party,

party, or of the Judge, and the parties to the Plea, and that he declare in what point they have made a false oath.

Or the Tenant may plead, That the Plaintiffe ought not to be answered to this attaint, because the first Judgement had not its full effect; or because that the principall in all, or in part, or in right of satisfaction of the damages remaineth yet to be barred.

Other Exceptions there are, as to the challenge of the persons of the Jurours, as appeareth in the Chapter following.

CHAP. III.

Sect. 34.

The Ordinance of Attaint.

BEcause it belongeth to the Plaintiff to prove his action, & to the affirmour to prove his affirmation, and not to the denyer his negation; & that two credible witnesses according to the Word of God are sufficient for witnesse. The usage is, That the affirmative party in aide of the Court, cause the neerest credible neighbours to appeare in witnes, so that there bee 12 men at the least of the Jury, of ancient time ordained to be of the Assize, of which if two men are by false verdict of them, and of the other Jurours; or if by good examination, if al the Jurours be not of one assent found convenable, it sufficeth; And if not, or if all the Jurours say generally, that they know nothing, or doubt of the matter, Or if they say not expresly against the Defendant, or if they speake for the Defendant

in such cases, it is to be adjudged against the Plaintiffe, that hee proveth not sufficiently his saying. And although the Defendant would make other defence, he shall not bee suffered so to doe.

Against Jurours hold challenges, as against witnesses in this manner. Sir, this man is not a convenable Jurour, because he is one of those who Endicted me of a mortall crime, so as hee did as much as in him lay to destroy me, and so he is my mortall enemy, Or for other cause of enmity.

Or because that he is Excommunicate, or Endicted, or Appealled of a mortall Felony; or because he is not of the Kings Allegiance, or because hee was at another time Attainted of a false oath, or suffered such corporall punishment for his offences, or otherwise, is infamous.

Or because he is friend, cosen, or allie, or of kindred to the other party; or because he is a villaine, or otherwise in custody; or because he is the servant, or Proctour, or Tenant of the adverse party; Or because shee is a woman, or because he was Out-lawed, or because he was forjured the Realme, or because he procured himselfe to one of the Jury, or because he is within age, or because he is a lunatique, or a mad-man, and many other exceptions of challengers there are; of which if any be denied, the challenge is to be tryed by the Jurours, and according to the tryall, the Jurour shall be admitted or refused And if no Jury once appeare for want of Jurours, he may have another.

CHAP.

CHAP. III.

Sect. 35.

Of Oathes.

OAthes differ many wayes; The chiefe Oath is that of Fealty, which is incident to every Homage iſſuing out of Land, And ſometimes there is the oath of Fealty, of reſients and dwellers in other Mannours, and ſometimes remaining in others ſervice.

The oath of Allegiance was in theſe words. I will beare faith to ſuch a King of life and member, and Terren honour, againſt all thoſe that from this day forward, ſhall, *&c.* So God me helpe, and his holy Evangeliſt.

CHAP III.

Sect. 36.

Homage.

HOmage is done in theſe words. I become your man for ſuch Land; ſo that the whole quantity be ſhewed, and certainty ſpecified; whereby the Lord well knoweth both how he may warrant his Tenant, and for how much he bindeth his Land to warranti; and that the Tenant know for how much he is his Tenant.

CHAP.

Cap.3 Sect.37.

Fealty annexed to Homage.

THe Oath of *Fealty* annexed to *Homage* is in these words. I shall bear *Fealty* to him by name of life and Member, &c. for so much as I shall be his Tenant against all, &c. saving the Oath of *Fealty* which I have made to such a King, &c:

And if I sweare *Fealty* to another then to the King, then thus, saving the Faith which I swore to the King, and to my other Lords,

And if the Homage be done to the King or to another to whom the Tenant hath before sworne *Fealty* in these Cases, Hee needeth not sweare *Fealty* againe, if the Alliance in no case hath bin broken.

Chap.3 Sect.38.

Common Oathes.

COmmon Oathes are in these words, I will speake truth in what you aske of mee in such a Case; So God mee helpe, &c.

The Oathes in Assises are in these words.

I will speake the truth of the Land of which I have had the view by Authority of this Assise, or of the Land of which this Action of Reddisseision is arraigned, or of the Pasture, or Fee or of the Nusance, or of the Wall, or of the Ditch, or of the Pool, or of the Water, or of the Church, or of the

the Rent or of the ſervice, and nothing ſhall hinder me that *I* ſhall not ſpeak the truth, &c.

Of Life and Member and Terren Honour, he will doe ſo much, that he will never aſſent that the King or his other Lord have damage of his life, or any of his Members, nor will aſſent that his honour ſhall be overthrowne in power, nor fame.

Cap. 3. Sect. 39.

Of finall Accords.

NO Law forbiddeth Pleas, nor Accords, wherefore it is lawfull for every one to agree with his adverſarie, and to releaſe and quit claime his Right, and his Action.

Nevertheleſſe after one hath once affirmed and brought his perſon all Action whereby ſcandall ariſeth, none can agree it without the leave of the Iudge, ſo as he may withdraw it. For every Plaintife in Actions of Scandall who attainteth not his Adverſarie according to that as hee hath brought, his plaint is adjudged ſcandalous, as his adverſarie ſhould be if he were attainted. Nevertheleſſe in favour to ſave a man from death, who is not attainted of mortall Offences, it is ſuffered that the Adverſe parties doe agree, After Battaile waged one of the parties nevertheleſſe remaineth infamous.

None can accord or agree, who is not of the Age of 21. yeares, nor any who is in cuſtody, nor any by Attorney.

In

In custody are villanies, married women, men professed in Religion, Infants within the age of 14 years, heirs Idiots, heirs deafe and dumbe, heirs deceased, and those who are in prison, and under Bayle, and women who are in the custody of the Lords, who have the marriage of them.

CHAP. IIII.

The Contents.

OF Iudgment.
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CHAP.

CHAP. 4.

SECT I.

Of Iudgment.

THe flower, and neceſſity of Law doth depend in righteous Judgment, without which the Law can have no effect, nor any due end. And therefore it is fit to ſpeake of judgments, which are not in all points here according to the rigour in the old Teſtament, and the uſages uſed by *Moſes* and the Prophets, before the Incarnation of Chriſt, but they are mittigated to the temper of mercy of the truth, and of the juſtice which Chriſt himſelfe uſed upon the earth, and commanded to be uſed in the new Teſtament, and which the Apoſtles and their ſucceſſours have uſed ſince the Incarnation of Chriſt, and according to the judgements of the ancient uſages in Pleas, touching the Lawes of this Realme.

CHAP.

CHAP. IIII.

SECT. 2.

The Ordinance of Judgement.

IUdgement commeth from jurisdiction, which is the greatest dignity which belongeth to the King. And there are two kindes of jurisdiction, Ordinary, and Assigned. Every one hath ordinary jurisdiction, if offence take it not away from him; for every one may judge his owne according to the righte rules of Law. But this jurisdiction is now restrained by the power of Kings, in as much as none hath power to hold Plea of Trespasse or of Debt which passeth 40 s. but the King. Nor anie hath power of Counsans of Fees without a Writ. Nevertheless, it is lawfull for every one to f. oust the mortall offender, for committing of their offences by good witnesses, by warrant of ordinary jurisdiction, whether the offenders bee Clerks or Lay-people, of age, or within age, and all others of what condition so ever they be; and in those cases are those offences called notorious offences.

There are two kindes of notorious, notorious in fait, and notorious in right.

Notorious in fait is, where no contradiction lyeth, nor no oathes need to justifie them, by reason of the witnesse of the people.

Notorious of Right, is where the offenders are attainted of their offences by themselves, or by the oathes of witnesses, or otherwise in judgement. This jurisdiction assigned is

that

that which the King assignes by his Commissions of his Writs; for without a Writ he cannot by Law grant any jurisdiction, if not in the presence, and with the assent of the parties.

None can give jurisdiction but the King, & the reason is, because he is not sufficient to beare without helpe the charge which belongeth to him to punish the Trespasses, and to assoile the offenders which hee hath to governe.

And so our Ancestours appointed a Seale and a Chancellour to helpe the same, to give Writs remediall to all Plaintiffes without delay.

That Writs used to be of this Assize, They were without raysure, without enterlyning, without blots, without usuall transposition, and without every fault in the parchment and letters, and written in English with a knowne hand, by a Clerke of the Chancery and used to containe the name of the parties and the substance of the Plaintiffe, and the name of the Judge, and of the King, or other Teste of the Writ, which sometimes were directed to the Lord of the Fee, sometimes to the Bayliffes, sometimes to the Justices in Eyre, sometimes to certaine persons named, and sometimes to persons not named, as to Bayliffes, Justices, and Sheriffes.

And every Plaintiffe used to have a Commission to his Judge, by the Writ Patent aforesaid.

And now may Justices, Sheriffs, and their Clerks forge Writs, thorough draw loose a-

mend or empaire them, without any proſecuting or puniſhment, becauſe the Writ are made cloſe through abuſe of the Law. By that Seale only is juriſdiction grantable to all Plaintiffes without difficulty, and the Chancellour is chargeable by his oath of allegiance to make ſuch Writs, and that hee do not delay or deny juſtice, nor a remediall Writ to any one.

Chap. IIII.

Sect. 4.

Juriſdiction is a power to declare the Law.

THat power God gave to *Moſes*, and that power they have now, who hold his place upon earth, as the Pope, and the Emperour, and under them the King now hath this power in his Realme.

The King by reaſon of his dignity, maketh his Juſtices in divers degrees, and appoinſeth to them juriſdiction, and that in divers manners, ſometimes certaine, eſpecially, as in Commiſſions of leſſe Aſſizes; ſometimes in certaine generally, as it is of Commiſſions of Juſtices in Eyre, and of the Chiefe Juſtiees of Pleas before the king, and of Juſtices of the Bench, to whom juriſdiction is given to heare and determine Fines not determined, the grand Aſſizes, the tranſations of Pleas, and the rights of the King and of the Queen, and of his Fees, and the words of the Kings Writs, whether they be named generally, or ſpecially.

Beſides, the Barons of the Exchequer have

Jurisdiction over receivers, and the Kings Bayliffes, and of Alienations of Lands and rights belonging to the King, and to the right of his Crowne. Sometimes jurisdiction is given to Sheriffes for the defaults of others, as appeareth in the Writ of Right; where it is sayd, That if he do not right, that the Sheriffe of the County shall do it.

Sometimes to those who have the Returne of Writs Returnables.

Sometimes jurisdiction is given to the Justices of the Bench by removing of the Pleas out of the Counties, before the sayd Justices, and sometimes to Record the Pleas holden in meane Courts without Writs, before the same Justices of the Bench: But as those Records ought not to availe the Plaintiffes, if not after judgement given, that the Pleers be Returnable untill after their judgements. And as the Pleas moved upon the Writs are to be remanded into the Lords Courts, where the Lords have not failed to do right. In like manner are the Pleas removed by Pone returnable in the Counties, in case where the parties never appeared in Court for to Plead.

To the office of chiefe Justices, it belongeth to redresse and punish the tortious judgements, and the wrongs and the errours of other Justices, and by Writ to cause to come before the King, the proceedings and the Records, with the originall Writs, and before such Justices are all Letters Pleadable returnable, and to be ended, wherein mention is made before the King himselfe; and

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the Writs not Pleadable, nor Returnable before the King, are returnable into the Chaucery.

And also it belongeth to their office, to heare and determine all plaints made of personall wrongs, within twelve myles of the Kings house, and to deliver Goals and the prisoners from thence, who are to be delivered, and to determine whatsoever is determinable by Justices in Eyre more or lesse, according to the nature of their commission.

On the other side, there is a kinde of jurisdiction which is called Arbitrary, which is not ordinary, nor assigned, as is such which is by the assent of the parties.

Of Jurisdiction commeth Judgement, which hath many significations: In the one, judgement is as much to say as absolution from offence; In another sence, as sentence, which sometimes soundeth well, as of discharge or acquittance from punishment, and sometimes ill, as Excomengment: and in another sence, as the end of the Plea, and the end of jurisdiction.

Jurisdiction assigned may be for a time, or for ever. For a time, as in some exception dilatory, where the Action reviveth; for ever, as by a definitive sentence upon the Action.

Judgements vary according to the difference of offences. In like offences, nevertheless there are the like Judgements. For the mortall offences according to the warrant of the old Testament, were assoiled by death; For in the old Testament it is found, That

God commanded *Moses*, that he should not suffer Felons to live. But before, more is to be spoken of punishments, it is to see by what introduction offenders and contumacious persons are compellable to appeare in Court, and by what judgments.

CHAP. IIII.

SECT. 4.

Defaults punishable.

DEfaults are punishable many wayes. In appeals of Felony they are punishable by Outlawry; which judgement is such, that after that any one hath been solemnly called, and demanded to appeare to the Kings peace at three severall Counties for felony, and he commeth not, that from thence forward hee is holden for a Woolfe, and is called Wolfshead, because the Woolfe is a beast hated of all people; and from thence forward it is lawfull for any one to kill him; as it is a Woolfe whereof the custome was to bring the heads to the chiefe place of the County, or of the Franchise, and according to Law, for every head of an Outlaw, to have halfe a marke, and such Fugitives, Outlawes, forfeited for their contempts, the Realm, Countrey, friends, and whatsoever belonged to the peace, and all manner of rights which they ever had, or could have by any Title, not only as to themselves, but to their heires for ever. Also, all confederations of Homages, of alliance, of affinity, of service, of oathes, and all maner of obligations betwixt the Outlawes and others were broken, severed

ted, and defeated by such judgement. And all manner of Grants, Rents, and Contracts, and all manner of Actions which they had against any manner of persons, were void, not only from the time of judgement, but from the time of the Felony; for which such judgement was given, and such persons could never againe resort to answer the Felony, if the Processe of Outlawry were not faulty, if not by the great mercy and favour of the King; Weomen were not plevisibles, and put in dozens as men but were waves.

CHAP. IIII.

Sect. 5.

Defaults.

IN personall Actions, venialls, defaults used to be punished after this manner. The Defendants were distrained to the value of the demand, & afterwards they were to heare their judgements for their defaults, and for default after default, judgement was given for the Plaintiffe. This usage was changed in the time of King *Hen.* the first, That no Freeman was not to be destrained by his body for an action personall, veniall, so long as he had Lands; In which case the judgement by default was of force, till the time of King *Hen.* the third. That the Plaintiffe should recover his seisure of the Land, to hold the same in demeasure after default, untill due satisfaction was made, so as the defaults were more hurtfull to persons in contempt, then profitable.

Some Actions are personalls, and not mixt in the introduction, as of Neiftie of

Accompt; of leading away distresses: and some actions there are, that although they savour of the personalty and realty, yet they hold not the rules of those actions: As of Recognitions of Assizes, in which if the Tenants make defaults, for that there is no distresse nor seisure of the Land, or other thing in the Kings hands, but the Recognitions are to be taken *ex officio*, and the Judgements are to be pronounced according to the Verdict of the Jurours, in respect of such defaults.

CHAP. IIII.

SECT. 6.

Of Personall Action.

IN personall Actions, venialls, where the Defendants are not Freeholders, the defendants used to be punished after this manner. First, Processe was to bee awarded to arrest their bodies, and those who were not found, were put in exigent in what Court so ever the Plea was, and were at three Courts solemnly demanded and proclaimed; and if they appeared not at the fourth Court, then were they banished the Lords jurisdiction, or the Bayliffes of the Court for a time, or for ever, according to the quantity of the trespasses.

CHAP. IIII.
SECT. 7.
Defaults in reall Actions.

THe defaults in reall Actions are puniſhable in this manner. At the firſt default the plaintife is there ſeized to the value of the demand into the hand of the Lord of the Court, and the Tenanes are ſommonable to heare their Iudgments of defaults; Or after appearance, the ſeiſure is to be adjudged to the Plaintifes, to hould in the name of a diſtreſſe, untill by lawfull judgment hee be ouſted thereof. And if any one appeare in Court, firſt he is to pleniſe the thing in demand, and preſently to anſwer the default; In which caſe hee may deny the Summons, becauſe hee was never Summoned, or not reaſonably Summoned, and thereof he may wage his Lawyer againſt the Teſtimoney of the Summoners, although they be preſent, and if he wage his Lawyer, he is preſently to plead to the Action, or to the plaintife.

CHP. IIII.
SECT. 8.
Of Actions Mixt.

THe defaults of mixt actions are puniſhable in this manner, The defendants are diſtrainable by all their moveable Goods and Lands, ſaving that they are not put out of that poſſeſſion from Court to Court, till they apeare and Anſwere, and

the issues come to the profits of the Lords of the Courts.

Chap. IIII.
Sect. 9.
Of Pledge and Mainpernor.

PLedges and Mainpernors are of one signification, notwithstanding that they differ in names; But Pledges are these, who baile other things then the Body of Men, as in Reall Actions and Mixt Mainpernors are in personall Actions, only those who bayle the Body of a Man; safe Pledges are those who are sufficient to answere the demand, or the value, and are true men; and Freeholders to whom the Plaintife is, and in whose Court the Plea is brought; and if any one bring the Body or his Fees by default, he is sufficient punished, though hee bee not amerced, but then the Offendor is first amerceable, when he is brought to judgement, and cannot excuse his wrong or save his default.

And as none who commeth before Summons is amecreable, so no Plaintife is amerceable, or his pledges, *de prosequendo* for Nonsuit, where the Tenant appeareth according to the warrant of the Summons; or other wise maketh satisfaction for the same. As in Case where the King Commands the Sheriffe, that hee command such a one to appeare or to doe; and if he do not; and the Plaintifes put in sureties to prosecute his suit

ſuit, then that he ſummon or attach the defendant, &c. In which caſe if the Sheriffe had not warned the Tenant to appeare or to do according to the points of the Warrant, if he take ſurety of the Plaintife to proſecute, hee doth him wrong: But the Plaintifes and their pledges are to bee amerced, when the defendants offer themſelves in judgment againſt them! and they make defaults by Nonſuit.

And alſo thoſe Sheriffs do wrong who forbeare to execute the Kings Commands in as much as the Plaintifes have found ſureties to proſecute their Plaints when no mention is made in the Writts to ſu: in ſureties.

Chap. IIII.
Sect. 10.
Defaults after ſummons.

As there is a default of perſons, in the like manner there are of things; As of ſervices iſſuing out of Lands where the Lands are in ſervice; and wherenot: If Rent, Suit, or other ſervice bee behinde to the Lord of the Fee, The Tenant is not diſtraineable for the ſame by his moveable goods, but it behoveth to ſommon the Tenants to ſave their defaults, or to make ſatisfaction, or to anſwere wherefore thoſe ſervices due out of their poſſeſſions are behinde to the Lords, and if they appeare not at the Sommon by the award of the ſuitors, their Lands are to be ſeiſed into the Lords hands, til they juſtify themſelves by pledges. And if they be againe ſummoned,

ſummoned, to heare the Iudgments for their defaults; Although they come not at the ſecond Summon, they are not to bee amerced, in as much as they came, they may render the Land, or alledge a priviledge, or ſay ſomething why they ought not to obey the Summons.

And if the Lord have not a proper Court, nor ſuitors, or hath not power to do Iuſtice to his Tenants in manner as aforeſaid; Then the ſame may bee done in the County or Hundred, or elſe in the Kings Courts; Or at firſt by a Writ of Cuſtomes and Services, and other Remediall Writts. And if any one hath not any thing to acquit himſelf, the Lord is not to looſe his Right, although hee be delayed thereof, but the Lord may ſeize his Land as before is ſaid, and the Tenant is to recover his damages where he can, and it ſhall be accounted his folly to enter or remaine in another Fee, without the conſent of the Lord.

And if any one ouſt him of his Land, and of his Tenement, & enforceth another perſon to hould of him, and maketh himſelfe meſne betwixt the Lord and the Tenant, in prejudice of the Lord, in ſuch a caſe, the law is uſed to hould the courſe after ſaid.

Cap. IIII.

Sect. II.

Of Champion.

IF any one do or ſay to his Lord of whom he houldeth any thing, which turneth to the

the hurt of his body, or to his disinherison or to his great dishonour, First by the Award of his Court, or of some other such a one is sommonable, if he be his Tenant, and afterwards if he make default he is destrainable by his Land by the Lord, till he appeare, and if hee appeare, and cannot discharge himselfe, by his wager of Law, by 12. men more, or lesse according to the Award of the Court hee is to bee disinherited of the Tenancie which hee houldeth of the Lord in such a manner by the Judgment of the Suitors, and so it behoveth that the Tenants leave their Lands, and that they come to the Lords.

And if any one denieth his service which he ought to do, it may be said by the Lords, that wrongfully he denieth either part or the whole, and that to his wrong, and so further count of seisin by his owne hand, and that such is his right, &c. as after shall be said.

And the Tenant may choose to try his Right by his owne body, or by another, or joyne issue upon the Grand Assise; And pray Conusans whether hee hath the better right to hould such land specified, discharged of such service, as he houldeth, or the said A. to have the same Land indemesure as he claimeth.

And if the Defendant will try his Right by the body of another, Then yee are to distinguish. For if the Action be personall, the Suit need not be present; and if the Action bee Reall, and the Tenant hath his Champion present; Then may the Plaintife offer his Champion against the Champion

on of the defendant, or he shall looſe his Covenant or his Writ. And if the Defendant have nochampion, then are the parties adjournable if they have joyned Battle, that they have their Champions ready at the next Court, as appeareth in the caſe of Saxeling to whom *Huſtan* was bounded in a Bond of 10. li. by a writing Obligatory made at Rome, which the ſaid *Hunſtan* denyed, That it was not his deed, To which Saxeling by way of Replication Anſwered, That hee wrongfully denyed the ſame, and that wrongfully, for that he ſealed it with his Seale, or with the Seale of another which he borrowed of him, ſuch a day, ſuch a yeare, and at ſuch a place, and that if he would deny it he was ready to prove it by the body of A. who ſaw it, or by O. and C. who ſaw the ſame, and if any hurt come to them, he was ready to prove the ſame by another, who could prove the ſame, And ſo it appeareth, that it is not needfull to have preſent Suit in ſuch perſonall Actions the firſt day, but the Parties may bee adjourned as it is ſaid.

And if any one who cannot bee a fit witneſſe, or who is a Champion bee offered by one of the parties to combate who was not named before to make the Battle, and the adverſe partie there challenge him, and demand Iudgement of the default, in ſuch, ſuch caſe the Iudgement is to be given againſt the profferer.

And if any ill happen to any of their Champions wherebythey cannot combate according to their proffer, none is reſceiveable

to

to try the battle for him but only his eldeſt ſonne Lawfully begotten as by ſome is ſaid.

And if the Tenants champion be vanquiſhed. The Tenant thereby looſeth all Homage and all Alliance, and all Oathes of Fealty, and all Homage betwixt him and the Lord, and the Lord is to enter therein and to hold the ſame in demeſne as if he had recovered by the Grand Aſſiſe, And if the champion of the Lord be vanquiſhed, that then the Iudgement be, that the Tenant hold his Land for ever quit of the ſervice in the demand.

And if the King doth any wrong to any of his free men, who hould of him in chiefe, the ſame courſe is to be holden, The Earles of Parliaments, and the Commons have Iurisdiction to heare ſuch cauſes and determine them, becauſe the King cannot by himſelfe, nor by his Iuſtices determine the Cauſes nor pronounce their Iudgment, where the King is a partie.

And as the Lords may challenge their Tenants of wrong, Or Injuries done to them againſt the Articles of their Fealtie, In the like manner are the Lords challengeable of wrongs and Injuries done by them to their Tenants. And if the Lords do not appeare to anſwer their Tenants; Then are the Tenants to be adjudged that they doe no ſervice for their Lands, till the Lords have Anſwered.

CHAP.

CHAP. IIII.
SECT. 12.
Of punishments.

PVnishment is a satisfaction for a Trespasse or an Offence, There are two kinds of punishments. Voluntarie, and Violent.

Volantarie is that which bindeth the doer of his owne accord, as it is in his Compromises, to compell the people to keepe their Bargaines, But with such punishments the Law medleth not with: Of violent punishment wherewith the Law medleth, there are two kindes, Corporall, and Pecaniarie.

Of Corporall, some are Mortall, and some Veniall, Of Mortall, some are by beheading, some by drawing, some by hanging, some by burning alive, some by falling from dangerous places, and otherwise according to Auncient privyledges, and Vsuages.

The Offences which require punishment of death, are the mortall Offences.

Of Veniall punishments, some are by losse of Member; As the Fellony of Mayhem in case of wrong; Of Member; some by the losse of hand as it is of false Notories, and of cutters of Purses with the Larcine of lesse then 12. d. and more then 6. d. which King *Rich.* changed, some by cutting out of Tongues, as it used to be of false witnesses, some by beating, some by Imprisonment, some by losse of all their moveable goods, and not moveable as of false Iudges,

and

and it is of uſurers attainted of uſury after their deceaſe, but not if they bee attainted thereof in their life, for then thy looſe but only their moveables, becauſe by pennance and Repentance, they may amend and have Heires. Some by exile and abjuration of their Chriſtianity, or of the Realme, of the Towne, of the Mannor or the Land and their friends, as it is of thoſe who are attainted in perſonall Actions Venialls who are not able to make ſatisfaction, Some by Baniſhment, as it is in contempts in perſonall Actions, Venialls, ſome by other Corporall paines as it appeareth after its place.

And although one offend indeed, or in word, in all judgements upon perſonall Actions, 7. things are to bee weighed in the ballance of Conſcience, that is to ſay, 1. The cauſe. 2. The perſon. 3. The place. 4. The time. 5. The Quality. 6. The Quantity. 7. The end.

1. The cauſe whether it be mortall or veniall, 2. The perſon, the plaintiffe, and defendant, 3. The place whether in Sanctuary, or not. 4. The time, whether in day or in the night, 5. The Quality of the Treſpaſſe, 6. The Quantity appeareth in it ſelfe, 7. The end; whether the taking were in manner of diſtreſſe by a juſtifiable importment, Or in manner of Larine, By Alienation unjuſtifiable.

CHAP.

CHAP. IIII.

Sect 13.

Of Infamous Persons.

ALL those who are rightfull attained of an Offence, whereupon corporall punishment followeth are infamous.

Infamous ar all those who offend mortally or Fellonously, all those who are perjured in giving false witnesse, All false Iudges, All false Vsurours, and all those who are attainced of personall trespasses, to whom open pennance is joyned by enjudgment of Law.

Those who Imprison a Free-man against his will, or blemish the credit of his Franchise by extortion, or by any purchase, Those who also bring attaints and cannot prove the perjury, whereby honest Iurours are slandered.

And those who indite or Appeale a man who is innocent of Crime, blemishing his credit or wrongfull slandering him of any personall wrong, For those 3. Pleas are held odious, the one because the Holy Scripture forbiddeth vengance to men, but the punishment of Offendors belongeth to God; and God commandeth to shew mercy, and that is against the Appeale of Felony, The other of attainder of perjury is odious for the Corporall punishment which followeth thereupon; The 3. because it is against the Law of Nature; which will not that any man should be in slavery to another Creature.

Againe those who combate deadly for reward, who are vanquished in the Combate by Judgement betwixt two men, those who with-draw themselves from Battailes when they have undertaken the Combate, if therein they make default; those who keepe Brothell-houses of loose women, those who take againe their Wives after their sinne of Adultery is knowne to them, or keepe those suspected of that sinne; those who are Adulterours, those who Marry other Wives leaving the first, those who are Ellopours or Ravishers, those who take rewards to suffer, those who cast out their Children to death, those who ravish their Cousens, or Affines, those who Marry a Wife within the yeare after the death of their former Wives, those who suffer themselves to be Married within the yeare after the deaths of their first Husbands, those and they who Contract Marriages elsewhere, leaving their Wives, or Husbands, and those who too soone purifie themselves, and many other infamous Persons are to be punished by Corporall punishments in divers manners.

CHAP. IV.

SECT. 14.

Of Majesty.

THe punishment of the mortall Sin of Majesty against the King of Heaven;

Sodomy is by burying the offenders alive deepe in the earth, so that the remembrance of them be forgotten for the great abomination of the fact; it being such a sin which calleth for vengeance from God, and which is more horrible then the ravishing of the mother; but this offence is not to be brought before any Judge by way of Accusation, but the very hearing of it is forbidden. The Judgement of Romery is by fire, either to be burnt or hanged.

The Judgement of Heresie is foure fold, one is Excommunication, another Degradation, the third Dis-inheriting, the fourth is Burning to Cinders.

The Judgement of Majesty against the Earthly King is by punishment according to the Ordinance, and pleasure of the King.

The Judgement of falsifying, and of Treason is by drawing of the Parties, and hanging them till they be dead.

CHAP. IV.

SECT. 15.

Of Burning.

THe Judgement of Burning is to hang untill the Parties be dead, which used to be by burning, and in case where the damageous burning is by encrease of any combustable matter; it was used to

cast

caſt them into the fire when they found them freſh in the doing of it.

CHAP. IV.

SECT. 16.

Of Murder.

THe Judgement of Murder is commonly by hanging untill the Parties be dead, in Felonies not notorious, and in notorious it is by beheading the Murderours, nevertheleſſe we are to diſtinguiſh, for ſome kill men and offend not, nor deſerve any puniſhment; ſome are Manſlayers in ſignification and not by name, and ſome are ſlayers of themſelves.

The firſt are lawfull Judges, who by a right Judgement, and good Conſcience kill men; and the Miniſters, or Officers who doe Executions of ſuch lawfull Judgements; and alſo as it is of thoſe who kill without Judgement, and without offence, as it is of thoſe who are without diſcretion and kill men, as Mad-men, Idiots, Infants within the age of ſeven yeares, and thoſe who kill men in keeping of the Kings Peace, and of thoſe who kill by Law, as of thoſe Men-ſlayers, who kill men in their mortall offences, notorious in Fact, and as it is of thoſe who kill men in their owne defence, who otherwiſe cannot ſave their owne lives.

The other sort is of those who have a desire to kill and cannot, as it is of those who cast Infants, sicke people, old people, in such places where they intend they shall dye for want of helpe, and as it is of those who so paine innocent men, that to avoid the same they confesse themselves to have mortally offended; those who Condemne men by corrupt Judgement, although that they doe not directly kill them; and as willfull Men-slayers, who Appeale or Indite innocent Persons of mortall offence, and prove not their Appeales, or their Indictments; and although these use to be Judged to death, nevertheless King *Hen.* the 1. Ordained this mitigation, that they be not Judged to dye, but that they have Corporall punishment; and of those who wrongfully Appeale yee are to distinguish; for if any one hath appealed another falsly, that there was no colour of Appeale by Judgement, or other reasonable proofe, in such case he was to be adjudged to make satisfaction to the Party, and afterwards to suffer Corporall punishment.

King *Canute* used to Judge the Maine-prisors according as the Principalls when their Principalls appeared not in Judgement, but King *Hen.* the 1. made this difference, That the Ordinance of *Canute* should hold against Maine-prisors who were consenting to the Fact, and the other should be adjudged against the Plaintiffes, according to the example of the Principalls

palls if they were present, and against the King they were punished with a pecuniary penalty.

The third Case is of those who burne, hang, hurt, or otherwise kill themselves.

Againe yee are to distinguish of other Men-slayers, as of Phisitians, Jurours, Justices, Witnesses, of Idiots, Mad-men, and Fugitives; for Phisitians and Chirurgions are skilfull in their Faculties, and probably doe lawfull Cures having good Consciences, so as nothing faileth to the Patient which to their Art belongeth; if their Patients dye, they are not thereby Men-slayers, or Mayhemors, but if they take upon them a Cure and have no knowledge or skill therein; Or if they have knowledge, if nevertheless they neglect the Cure, or minister that which is cold for hot, or hot for cold, or take little care thereof, or neglect due diligence therein, and especially in Burning, and cutting off of members which they are forbidden to doe but at the perill of their Patient; if their Patients dye, or lose their members, in such cases they are Men-slayers or Mayhemders.

Judges Iudge men sometimes falsly to death wittingly, and sometimes out of ignorance, in the first case they are Murderers, and are to be hanged by Iudgement, and not onely those who gave the Iudgement but the Accessories, Abbettors, and those who hindred not such Iudgement when they might have done it.

And in the second place yee are to distinguish; for one manner of ignorance is, as of a thing known had not been known, and this kinde of ignorance doth excuse, the other is of a thing not knowne which ought to have been knowne, although he was not bound to know it; and this excuseth; also the third kinde is, which commeth of not knowing that which a man is bound to know, and this excuseth not; And note, that ignorance in its selfe is no offence, but this neglect of knowing is an offence. The Iudge doth not offend so much that he doth not make the Law, but he offendeth in foolish undertaking upon him to Iudge foolishly or falsly. The fourth kinde of ignorance is, that a man Iudgeth of a thing otherwise then rightfull, and if such ignorance come of the fact it excuseth, and of the Law then it excuseth not. Or thus, there is one manner of ignorance which one may overcome, and such excuseth not; and there is another kinde of ignorance which one cannot vanquish, and such excuseth whether it come by nature, or by too much passion, or sickneſſe, as of rage.

And that which is said of Iudges is to be intended also of Iurours, and of Witnesses in cases notorious, where many entermedle feloniously, and any one be killed, and there be no cause to kill him; in case also where a childe is killed by too much beating, and in case where many have wounded one man, who dyeth of one

sole

ſole ſtroke, all of them generally are adjudged Men-ſlayers for the apparant evidence of the fact; for none but God can Iudge the intentions of thoſe that gave the ſtroke that it was to kill, nor who intermedled therein to hinder that any hurt were done, with a good intent; ſome who command what may be for hurt, or may be for good; ſome which held the Parties, and others who ſtroke.

Againe yee are to diſtinguiſh of other Men-ſlayers, as ſome kill thoſe who enter to doe a miſchiefe, if ſuch caſes be not notorious their acquittance or Condemnation is in the diſcretion of the Suiors; alſo in caſe when people kill a man in defence of themſelves and their poſſeſſions, as it falleth in diſſeiſins.

Againe, if a man draw another to fence with him, or to ſhoote with him, and he giveth him ſuch a wound as if he meant willingly to murder him, the ſame is not to be Iudged for murder, ſeeing men cannot Iudge but according to Facts, and not according to the intents or thoughts of the parties hearts,

Of Fooles alſo yee are to diſtinguiſh, for all fooles are accountable Menſlayers, as to have Iudgement; but only Idiots, and Infants within age, for a crime cannot be done, nor an offence but through a corrupted will, and a corrupt will cannot be but where there is diſcretion, and innocency of Conſcience doth ſave fooles outragious; and therefore *Robert Vol-*

round ordained, That Idiots being Heires ſhould be in the cuſtody of the King, for their Marriages, and for their Inheritances of what Mannours or Lords ſoever they held their Lands.

Likewiſe yee are to diſtinguiſh of Madmen, for Frantickes and Lunatickes may offend mortally, and ſo they are to be accounted and Iudged for Man-ſlayers, but not thoſe who are Mad continually.

Of Infants alſo yee are to diſtinguiſh, of Infants Murderors, and of Infants killed; the Murderors within the age of one and twenty yeares are not preſently to be Iudged to death in a fact not notorious, before they be of full age.

Of Infants killed yee are to diſtinguiſh, whether they be killed in their Mothers wombes or after their births; in the firſt caſe is is not adjudged Murder; for that none can judge whether it be a Childe before it be ſeene, and knowne whether it be a monſter or not; and to Infants killed in the firſt yeare of their age the Counſance belongeth to the Church.

Of Fugitives, and of thoſe Defendants is the diſtinction which followeth; he who killeth a Fugitive after that he ſubmiteth himſelfe to the Kings Peace in a fact not notorious, he is to be adjudged to death as a Man-ſlayer, otherwiſe not; and he who killeth a man defending himſelfe, who might flye and avoid the killing is alſo to be adjudged to death as a Man-ſlayer, otherwiſe not.

Of

Of the offences of Robbery, Larcine, Burglary, where the damage exceedeth 12. pence where the offenders are taken in their offences, the offenders are to be killed by losing of their heads, if the people be present after the fact and testifie the felony; and in cases not notorious the Iudgement is to be hanged till they be dead.

And if the Defendant be a Woman yee are to distinguish, whether she hath a Husband or not who is yet living, and also of the Action, whether it be mortall or not, for if she be, and was sole without a Husband which she hath married at the doore of the Monastery, and the Action be mortall she shall answer as a man doth; and if she be a Feme-Covert yee are to distinguish, for if she be accused of a mortall Crime as principall, she shall answer, and if as an Accessory then yee are to distinguish; for if she be accused of consenting to the felony of her Husband, or to any other, her Husband not knowing it, yet yee are to distinguish of the Crime; of the offences of Larcine, of Burglary, and of other small offences she may answer, That she was under the command of her husband, and that she could not contract him; that answer is peremptory in Larcine, and if without the knowledge of her Husband she shall answer: And if a Woman without her Husband be accused to have been in the company of a Theefe for a minute, or a very small time, she may

say

say, that she was not in his company but as his Concubine.

Of morrall Judgements, of Outlawry, of Abjuration of the Realme, of vanquished in Battailes for mortall felony, and otherwise attainted of a notorious mortall offence, or not notorious, the offence is such that the blood is corrupted; and of the offenders the blood is extinct in every discent in right of blood, so that nothing can descend from them to any of their Heires either next or remote by discent, but all shall remaine to the Lords of the Fee, from the time they committed the offences, whoever were Tenants thereof in the meane time by what Contracts soever; and all Fealties, Contracts, and Obligations are blotted out thereby And of Fugitives it is according as it is with Out-lawes, and their goods which remaine (besides what belong to others) remaine forfeited to the King.

And the like in remembrance of their felonies, & in hatred of the felons it is lawfull to destroy all their manfion houses, to erradicate their Gardens, to cut downe and waste their Woods, to plow up their Meadowes, or otherwise overturne them, which King *Hen.* the 1. did moderate at the request of the Commons in this manner, for the saving of the Lands of mortall felons in their hands, of what Mannor soever they were holden, that he should hold the same, and should take the profits thereof for one yeare, and should doe

waste

waſt if there were not other agreement made with him.

For the offence of Rape, the Iudgement was to be hanged till he dyed, without having regard whether the Woman raviſhed were a maiden or not, or without diſtinguiſhing of what condition ſhe was, and whether at the Suit of the perſon, or at the Kings Suit; which offence before the time of King *Edw.* the ſecond, was by burning of them over the eyes, becauſe the luſt came in by eyes, and the heate of whoredome came from the reynes of the eacher.

Seaven things doe ſtay Iudgement of Death.

1 Falſe Iudgement, or fooliſh Iudgement.

2 Falſe Teſtimony.

3 Default of better Anſwer.

4 The haſt of the King.

5 A woman with Childe.

The firſt three Caſes have reſpite by forty daies, the fourth by thirty daies, the fifth by forty weekes, or more if the Childe be not borne.

6 Want of diſcretion, as it is of Idiots, Mad-men, and of Infants.

7 In Poverty, in which caſe yee are to diſtinguiſh of the poverty of the offender, or of the thing; for if poore people to avoyd famine take victuals to ſuſtaine their lives, or clothes that they dye not of cold, ſo that they periſh if they keepe not them-

themselves from death, they are not to be adjudged to death, if it were not in their power to have bought their victuals or clothes, for as much as they are warranted so to doe by the Law of Nature; and although the Law hath no respect but to the Soules of offenders, nevertheless King *Edward* limited the quantity of Robbery and Larcine in this manner; that is to say, that none should be adjudged to death, if the Larcine, or the stealing, or the Robbery did not exceed twelve pence Sterling; and note that King *Hen.* the 1. by *Randulph de Glanvile* Ordained, That in all mortall Actions, that where the Action was encountered with an affirmative exception, that the affirmation was first to be received in proofe in favour of life, and thence it was that if one man accused another of Felony, and he plead that he is not the man, the proofe was awarded to the Defendant to convince the other of lying, either by his body or otherwise. And so it is if the Defendant say that he could not be at the doing of such an Act, at the day, place, or yeare named in the Plaint, because he was then in another place, where by presumption he could not doe it, or that he could not be there present; Or if he saith that the thing came to him by good title, in favour of life the proofe belongeth to the Defendant peremptorily at his perill, to the overthrowing of the Action, and the exception; but if the Defendant solye de-

ny

ny the Action, in such cases the proofe belongeth to the Plaintiffe.

Of Our lawes returned from exile, banished men, and those who have forjured the Realme and returned, being taken and kept for a justifiable offence, the Iudgement is, that they be hanged till they be dead.

CHAP. IV.

Sect. 17.

Of Punishments in divers kinder.

THe Corporall punishments of Death being past, we are to come to Corporall punishments venialls, which are by open infamous Penances; and first of punishments, Tallions, or (like for like) which are in three Cases, that is to say, in Mayhem, Wounding, and Imprisonment, in which if the Pleas be brought in by Appeales of Felony for reverge onely, then belongeth the Iudgement Tallion, or like Iudgement, as Mayhem for Mayhem, Wound for Wound, Imprisonment for Imprisonment.

And if pardonable in forme of a Trespasse, then these Iudgements hold place, that the offender make reasonable satisfaction to the Plaintiffes, and afterwards that they be adjudged to doe open Penance

nance according to the quantity of the offence.

Open Pennances are these; amendments of High-waies, Causies, Bridges, setting them up in Pillories, or Stocks; Imprisonment, and abjuration of the Realme, Exile, Banishment, either from off the Land, or from the Towne; from entring into such a place, or from going out of such a place, by Ransome of such a penalty by pecuniary punishment, or by other Fine, and such other kinds of Iudgements penals. And if the offenders be Infants, or otherwise in custody, that in such cases the Guardians be adjudged to make satisfaction of the damages, and the Guardians to betake themselves to the goods of the Trespassours; but the open Pennance is to be suspended so long as they are in Ward, so that according to the difference of the offences and the offenders the punishments were in manner as followeth; and first of false Iudges, who the more greatly offend, for as much as they are in a higher degree then other people.

CHAP.

CHAP. IV.

Sect. 18.

Of false Judges.

OF false Iudges Assigned, King *Alfred* Ordained such Iudgement, that the wrong they doe to God whose Vicegerents they are, and to the King who is put in so noble a place as is the Seate of God, and hath given them so great Dignity as to represent the Person of God, and the Counsance as to Iudge offenders, that first they be adjudged to make satisfaction to those they have hurt, and that the remainder of the goods should be to the King, saving all other rights, and all their Possessions, with all their purchased Lands should be forfeited in whose hands soever they be come, and that they be delivered over to false Lucifer, so low that they never returne to them againe, and their bodies that they be punished and banished at the Kings pleasure, and for a mortall false Iudgement that they be hanged as other murderers; And for Mayhem, Wounding, and Imprisonment, that they have like for like, and the same Law, and in the same condition.

The Iudgement of false Iudges Ordinaries is not in veniall Iudgements so penall, as it is of Iudges Deligates before; but they are to make satisfaction to the Parties Plaintiffes,

Plaintiffes, and to the King they are punishable by a pecuniary penalty, and disabled from all manner of Iurisdiction whatsoever; and in Cases mortall, and Tallions, according as it hath been said before of other Iudges.

CHAP. IV.

Sect. 19.

Of Perjury.

PErjury is a great offence, of which yee are to distinguish either of Perjury of false Testimony, or of breach of faith, or by each of the Oath of fealty; of the first Perjury yee are to distinguish either of Perjury mortall, or veniall; if of mortall, then the Iudgement was mortall to the example of apparant murderers.

And note that in all personall Actions there belongeth such an award, that due satisfaction be made to the Plaintiffes, and that the offenders be punished with corporall paines, which paines are to be bought out by ransome or money; and if of veniall perjury, then that they be banished for a time, or for ever; and that their Woods, Meadowes, Houses, and Gardens be erradicated according to the example of murderers, saving that their Heires doe not remaine dis-inherited.

Of the other Perjury yee are to distinguish as breach of faith to the King, or to another

another Person, and if to the King yee are to distinguish whether as his Tenant or not; and if the Oath of Fealty be in respect of Land, and the fealty be broken in any of the points, then lyeth the Processe and defaults aforesaid; and if of an Oath not in respect of Land, yee are to distinguish whether of the common Oath of Fealty sworne to the King, for the remaining in his Fee, & then only Corporall punishment holdeth place, which passeth the punishment which should be adjudged to others not the Kings Offices, according to the Kings pleasure.

CHAP. IV.

Sect. 15.

Of the Offices of Justices in Eyre.

THe Presentments of offences are *Ex officio* by Coroners, by Sheriffes and Bayliffes in Turnes and viewes of Franck-pledge; by Enquests, and speciall Iustices, and by Kings *Ex officio*, or by their Chiefe Iustices, or of their Iustices generalls; and because that the one have not power to determine the presentments of such offences, nor to punish the Trespasses, and the other who can will not, or doe not that duty which of right they may doe; or punish the innocent, and spare the guilty. It was anciently Ordai-

ned that the Kings by themselves, or by their Chiefe Iustices, or by generall Iustices to heare and determine all Pleas, should goe Circuit every seven yeares through all Shires, to receive the Roles of all Iustices assigned, of Coroners, of Inquiters of Eschetors, of Sheriffes, of Hundredours, and of Bayliffes, and of all Stewards, of all their Iudgements, Enquests, Presentments, and all their Offices, and to examine those Roles whether any had erred therein, either in the Law, or to the damage of the King, or to the grievance of the people; and those things which they found not determined that they should determine them, and in the Eyre they should redresse the Officers, and punish the negligence of them according to the Rules of Law, and that they should enquire of all offences which belonged to the Kings Suit, and to his Iurisdiction. And note, that notwithstanding the King had the Suits of all mortall offences, and of wrongs done to the Law, and to the right of his Crowne, it is not thereby to be understood that he should have the Suit of all offences; but if any one be Plaintiffe and doth not proceed in his Suit after the same is affirmed, yee are to distinguish, if it be of a personall offence veniall it sufficeth for the Defendants, for the Non-suit of the Plaintiffe doth suppose satisfaction of the damage; and if it be of a mortall offence yet the King hath not the Suit, if not by warrant of Appeale, or Indictment,

diſtment, wherein it behooveth the Appealees and Enditees that they make haſte to acquit themſelves, for none is bound to Anſwer to any manner of Action brought by them, becauſe they are barred by an Exception of mortall infamy, by being Appealed or Indicted.

CHAP. IV.

SECT. 21.

Of the Articles in Eyre.

EVery Shire uſed to be warned by forty daies at the leaſt, by generall Summons of the Kings comming, where after the Eſſoignes adjourned, and the Aſſize of Victuals ſet, and the Ordinances proclaimed, and thoſe of Franchiſes adjourned, and the Jurours called, Sworne, and Charged with their Articles; and the claimers of Franchiſes, and the Rolls of the Juſtices, of Coroners, and of all Sheriffes, and of all other manner of Pleas, and Preſentments afrer the laſt Eyre taken and received; the firſt thing was to enquire, heare, and determine the Articles preſented and brought in the laſt Eyre which were not ended, and afterwards to determine Writs and Plaints, to deliver Viſnes, to examine the Rolls, to redreſſe the errours, and all other wrongs by right Judgements, without reſpect unto any perſon.

All the Judges Ordinaries, and Assigned Sheriffes, Bayliffes, and Stewards of Lords of Mannours, and all other who claimed Iurisdiction which any one could attaint of any wrong done against the right rules of Law, were condemned for the wrongfull Iudgements, with regard to the distinction of the Parties grieved.

Coroners, Eschetors, Sheriffes, Bayliffes, and other Ministers doing wrong to the King, or to the people, used to be punished according to the example of the other, and further according to the Kings pleasure.

The offenders which were found using false Scales, and false Measures, and gaining by breaking of any Assize, either of Bread, Wine, Ale, Cloth, or other Merchendizes used to be set in the Pillory, and Women in the Tumbrell, and afterwards were not suffered to Merchandize at any time, nor could they depart from the place or Towne to any Liberty, because the usage was contrary to Law.

Cut-purses taken *De facto* in their notorious sins used to be hanged, and for the cutting of Purses and stealing of other goods under the value of twelve pence, and lesse then sixe pence one of their eares used to be cut off without carrying them to Prison, or before any Iudge Assigned, and to banish them from the Towne, or from the Mannor for the second offence.

And for their Larcine under the value of sixe pence they used to set them in the Pillory

Pillory for the firſt offence, and to baniſh them for the ſecond.

In the Iudgements of Perſonall Treſpaſſes, venialls, as to the taxing of the damages put in plaints, *Martin De Pateſhall* uſed this courſe, the Judge uſed to enquire *ex officio* of the Iurours, by whom any principall Treſpaſſe was adjudged before him, the names of all thoſe who were guilty in the firſt degree, and of the Acceſſories, and therein he proceeded to Iudge the damages according to the number of the Endictors, ſo that no Plaintiffe ſhould recover no more entire damages by plurality of Plaints for one ſole treſpaſſe againſt the Treſpaſſours ſeverally.

CHAP. IV.

SECT. 22.

Of Franchiſes.

OF Franchiſes note, that becauſe the King doth not hold his Rights and Dignities of his Crowne but as an Infant, nor a grant from him of any franchiſes is ſo eſtabliſhed that Kings cannot repeale them againe, ſo as he give ſatisfaction to the value as by warranty; and it is lawfull for every one who findeth himſelfe grieved to Sue for the King, to ſeize every Franchiſe forfeited for contumacy; as if the Bayliffe of a Franchiſe doe not exe-

cution of the returne of the Sheriffe according to the Command of the King, by any abuſe, as by uſing his franchiſe too largely, or not duely; by a Writ enſuing, it is commanded that the Sheriffe enter into the Franchiſe, and the King doth recover the ſeiſin thereof, and ſo the ſame becomes guildable which was before a Franchiſe.

And all thoſe uſed to forfeit the Franchiſe of keeping of a Goale in Fee, who by title of Franchiſe of Infangthiefe, or of return of Writs hurted not without delay, the Perſons taken in the places within the Franchiſe for Felony done in Guildables, and ſend them into the Goale in Guildable, ſo that the King doe not loſe the Goods and Chattels of the Felons, nor his other rights; for the King giveth no Franchiſe to his owne prejudice, nor to the prejudice of others, eſpecially of returne of Writs, nor to have the cuſtody of a Goale. An example may be as betwixt two Neighbours in a Franchiſe, the one cannot keepe a Priſon to the prejudice of the King, and if he doe he forfeiteth the Franchiſe.

And it alſo appeareth, that Iurours came out of Franchiſes before the King and his Commiſſioners to Guildable and elſewhere at his command, as well upon criminall Actions as upon realls.

And if any one receive a Felon wittingly into his Franchiſe, the ſame is now challengable.

CHAP.

CHAP. IV.

SECT. 17.

Of ſatisfaction of Debt.

IF a Plaintiffe recover againſt many by Iudgement he ſhall have but once damages, as in this caſe: If many Perſons owe one Debt, and every one be bound in the whole, if one of them make agrement for the ſame, although he doe not make a ſpeciall agreement for all the Debtors, all of them nevertheleſſe are diſcharged, becauſe ſatisfaction hath reſpect to the Debt, and not to the perſons.

CHAP. IV.

SECT. 18.

Caſes of Diſſeiſin.

IF the Iurours in Perit Aſſizes are agreed that one ſhall give their common Verdict for all, and if they ſay that they know nothing, nor that the Plaintiffe ſhall receive nothing becauſe he proved not his Action; and if they be of divers opinions they are not therefore to be threatned, nor impriſoned; but they are to be ſevered and diligently examined. And if two Iurours be found to agree amongſt

all the rest, it sufficeth for him for whom they speake, and they are not to be examined upon the title of the possession, but it is sufficient for the Iudge to know if the Plaintiffe were disseised of his Land, whether it were rightfull or wrongfull according to the Plaint; for though it were right, nevertheless it was tortious, because the Tenant used force where he should have used Iudgement, and for that he made himselfe a Iudge therein, Iudgement is to be given for the Plaintiffe, so as he shall recover seisin, such as it is, saving every right by another Writ; for an Assize lyeth not upon Assize of the same Tenement, betwixt the same parties, nor an Attaint upon an Attaint; and if the Iurours for him, whether they were sworn upon the Action, or upon the Exceptions, Iudgement goes for him, and they behoove to enquire of the others named in the Writ, and if the Disseisors came in with force and Armes, although they hurt no persons body, all of them nevertheleſse are to be adjudged to Corporall punishment, according to the quantity of the offence; and if they cast him out of his dwelling house, or out of his Demesne, the felony of this Burglary is punishable at the Kings Suit, or at the Suit of the Party, for none is to be cast out of his house where he dwelleth, and which he hath used as his owne for a yeare without Iudgement, although he hath no title thereunto but by Disseisin,

or

or intruſion, and it ſufficeth for force and Armes, onely the ſhewing of Armes for to hurt the Adverſaries; and under the name of Armes are contained Bowes, Arrowes, Sawes, Launces, Speeres, Staves, Swords, and Targets of Iron.

The Iury ought to enquire of the damages, that is to ſay, of the profits of the Tenements done ſince the Diſſeiſin, and to whoſe hands ſuch profits after came, and of the Charges, Coſts, and reaſonable expences which the Plaintiffe hath ſuſtayned in his whole recovery, and in all things, and how much he is endamaged in diſtreſſe of his goods, and in his honour; and the damages being aſſeſſed, it is to be awarded that the Plaintiffe recover his ſeiſin, ſuch as it is, according to the view of the Recognitors, and the damages; and the Diſſeiſors are puniſhable according to the points of the offences.

For the goods found in the Tenements whereof none can know the value, as Charter, Writings, Royall Treaſure, and ſuch things locked up, the Plaintiffe hath an Action by Appeale of Robbery, or by a Writ of Treſpaſſe.

In Iudgement of Larcine veniable ſatisfaction is to be made to the Plaintiffes, to the double of the value of the things which are ſtolen; and in caſe of Robbery, to the value (4 double) or foure times value.

CHAP.

CHAP. IV.

Sect. 25.

Of Amercements.

A Pecuniary paine we call an Amercement, which follow reall offenders and mixt, and ſometimes are certaine, and ſometimes uncertaine. An Amercement is certaine, ſometimes according to the dignity of the Perſons, as it is of Earles and Barons; for he who holdeth an entire Earldome is to be amerced one hundred pound when he is leaſt amerced; And a Baron for a Barony entire one hundred Markes, and he who holdeth leſſe, leſſe; and more, more; according to the quantity of the Tenure.

And ſometimes by a certaine Aſſize in another caſe, as it is of Eſcapes of people impriſoned, in which caſe yee are to diſtinguiſh of the place, as where one eſcapeth out of the Kings Priſon, or out of the Priſon of another; out of the Kings Priſon yee are to diſtinguiſh of the cauſe, whether it be mortall or veniall, and if mortall, then diſtinguiſh if the cauſe were adjudged or not, and if adjudged by notory of fact, or of right, then the Corporall puniſhment is uncertaine; for if the Keeper, or more be aſſenting to the eſcape, puniſhment of death followeth thereupon; and if the cauſe was not adjudged, and the

Keeper

Keeper was not the Kings Officer, nor assented to the escape, then the Assize of punishment is so many Shillings sterling or more, according to the usage of the Country, or of the place, or of the person.

And if the Cause be veniall, then the escape is not punishable.

And if the escape be from the prison of others, then yee are to distinguish of the cause, and of the caption, whether the cause be mortall or veniall, and if mortall then the pecuniary paine aforesaid holdeth place; and if the cause be veniall, there is no punishment for the escape.

CHAP. IV.

SECT. 26.

Of Amercements taxable.

COmmon Amercements are Taxable by the Oathes and Affirments of the Peeres, of those who fall in *misere cordia*, according to the constitution of the Charter of Franchises, which willeth that a Free-man be assessed when he falleth into an Amercement according to the quantity of his offence, a Merchant saving to him his Merchandize, and a Villaine saving his Wainage; and these Affirrors are to be chosen by the assent of the Parties if they will, but the Kings Officers are the more

more grievously to be Amerced for the breach of their faith, &c.

Many cases there are where Corporall punishments are brought in by Fines of money, and such are called Ransomes, which is as much as to say, Redemption from Corporall paines; whereof some Fines are common, as for Murders, other for personall Trespasses of Townes and Commonalties, which Fines King *Edward* Ordained, that they should be assessed in the presence of the Justices, so as the names of them be put into the Roles of the Iustices, so that the Estreates may come to the Sheriffe to leavie the same by parcells, and not by totall Summons.

And in case where one recovereth Debt or Damages, King *Edward* enacted that it should be in the election of them to doe execution by leavying such Debt, and damages of the moveable goods of the Debtors at the very value, to the value of the thing in demand, except the Oxen, and Beasts of the Plow, together with the moyety of Lands, and Tenements of the Debtors, if the goods be held sufficient by a reasonable Extent untill the debt and damages be leavied.

Those who are Appealed and Endicted of Felony, and are not to be found, it behooveth that they be proclaimed, and especially before the Kings and his Justices Errants, and if they be found guilty, then they are to be commanded

to

so put them in exigent, so that the first County after the Eyre be the first day, and so they be demandable at three County-Courts untill they be Out-lawed, if they tender not themselves to the Peace.

CHAP. IV.

SECT. 27.

Of the Office of Justices in Eyre.

TO the Office of Iustices in Eyre it belongeth especially to enquire by Iurours, and by examination of the Roles of the Coroners, of all that were Out-lawed after the last Eyre, and after Certificate of their names they are to enquire of the names of their Pledges, that is to say, whether they were in Dozien, or in Franck-pledge, and if their Pledges be in the same County then are the Pledges punishable by a pecuniary paine, because they brought not those they tooke in Maine-prise to appeare; and if they were elsewhere in Dozien, then they are to enquire in whose Main-prise they were, and they are punishable according to the example of the Pledges for the same cause.

To help the memories of the people are Escripts, Charters, and Minements very necessary to prove the conditions and the points of Contracts, Gifts, Sales, Feoffments and other things.

By the Statute of *Leuchfred* it was Enacted, that one might deny nude Contracts made by words, and it was Ordained, that Plaintiffes should prove their Writings which were denyed, and not proveable by Neighbours in *England*, and for forraigne Contracts by Battaile, or by the setting to of other Seales, or by Iurours at the election of the Plaintiffes.

If Iurours have obscurely or doubtfully, or not sufficiently given their Verdict in any Action or Exception; or any of the parties be grieved thereby; there is remedy by a Commission of Certificate to make the Iurours come againe, and the Parties who are the Plaintiffs ought to have under the Kings Seale, and of the Iudge, and of the Parties, the proceedings of the Plea before, and shew the defect, and the offence of the Iurours; in which case if the Iudge by examination finde it doubtfull, the said doubt is to be reduced to certainty, and the obscurity to cleerneſſe, and the errour into truth; and so the first Iudgement is to be redressed.

CHAP.

The Contents of the Fifth Chapter.

Abusions of the Common Law.
The defects of the great Charter.
The reprehensions of the Statute of Merton *and* Marle-bridge.
The reprehensions of the Statutes of Westminster, 1.
The reprehension of the Statute of Westm. 2. *and of Glouceſter.*
The reprehensions of Circumſpecte agatis.
The reprehensions of the new Statute of Merchants.

CHAP. V.

Sect. 1.

Abusions of the Common Law.

THere are many who say, That although other Realmes use a written Law, yet onely *England* useth her Customes, and her Usages for Law not written; but betwixt rightfull and tortious usages there is a difference, for tortious usages not warranted by Law, nor suffered by Holy Scripture, are not at all to be used: as for example; those of Theeves, whose usages are to rob and steale.

And to shew some abuses holden for usages, which are frands to the Law, and repugnants to right, and which are not found justifiable by Holy Scripture, is this Chapter made of a Collection of part of the abusions of the Law, and of persons erring from the knowledge of the right of Law, and from lawfull usages.

Abusion is a disuse, or a misuse of right usages turned to abuses, sometimes by contrariety and repugnancy to Law, sometimes by too large a usage thereof.

1 The firſt and chiefe abuſion is, That the King is above the Law, whereas he ought to be ſubject to it, as it is contained in his Oath.

2 It is an abuſe, that whereas Parliaments ought to be for the ſalvation of the Soules of Treſpaſſors, twice in the yeare at *London*, that they are there but very ſeldome, and at the pleaſure of the King, for Subſidies and Collections of Treaſure and where the Ordinances ought to be made by the aſſent of the King, and of his Earles, they are now made by the Kings and his Clerkes, and by Aliens, and others who dare not contradict the King but deſire to pleaſe him, and to Counſell him for his profit, though the Counſell be not Covenable for the common people without calling the Counties thereunto, and without following the rules of Law, whereby it followeth that many Ordinances are grounded more upon pleaſure then upon Law.

3 It is an abuſe that the Lawes, and the Cuſtomes of the Realme, with their occaſions are not put into writing, whereby they may be knowne, ſo as they might be knowne by all men.

4 It is an abuſe, that force holds in Diſſeiſins after the third day of peaceable ſeiſin, for as much as he is not worthy to be aided by the Law who flyeth from Iudgement, and uſeth force.

5 It is an abuſe, that Juſtice is delayed in the Kings Court, more then elſe where.

6 It is an abuſe to ſuffer any to be in the Realme above forty daies who is of the age of fourteene yeares, *Engliſh* or Alien, if he be not ſworne to the King by an Oath of Fealty, and in ſome Pledge and Dozien,

7 It is an abuſe that Clerkes, and Women are exempted to make the ſaid Oath to the King, ſeeing the King taketh their Homage and Fealty for Lands.

8 It is an abuſe to hold an eſcape out of Priſon, or the breach of the Goale to be a mortall offence, for that uſage is not warranted by any Law, nor is it uſed in any place but within this Realme and in *France*, for as much as one is warranted to doe it by the Law of Nature.

9 It is an abuſe to ſuffer ſo many formes of Writs to be pleadable, and therein eſpecially that the Writs are Cloſe, and not Patents, as the Writs of Right; and in that they are made with interlinings and faſture, and otherwiſe vicious.

10 It is an abuſe that the money is not quarterable, that it is not Silver, that it is held payable if the forrein circle be not whole, to allay the Money *per* [illegible]. d. and make paying of Lead to every, &c.

11 It is an abuſe that the King takes more then twelve pence for the exchange of twenty ſhillings in the pound.

12 It is an abuſe that no pound is ſuffered to weigh twenty five ſhillings, or more then twelve ounces.

13 It is an abuſe that Treaſon is not adjudged

adjudged more by Appeales then it is.

14 It is an abuſe that a man who hath done Man-ſlaughter of neceſſity, or with the Peace, or not felonioufly, is detained and kept in Priſon untill he hath purchaſed the Kings Charter of pardon of death, as it is for miſchance.

15 It is an abuſe to hold the moveable goods of flyers forfeited before they be attainted of the Felony by Outlawry, or otherwiſe.

16 It is an abuſe to Out-law a man before it hath been enquired by the Oathes of Neighbours.

17 It is an abuſe to ſuffer a man attainted of Felony to be an Approvers, and to have a voice as a true man, and that Clerkes, Women, Infants, and others who cannot Combate are ſuffered to be Approvers.

18 It is an abuſe that others receive the Appeales of Approvers, then Coroners, and that they are ſuffered to Appeale oftner then once, or by diſtreſſe or otherwiſe, or in any manner falſly.

19 It is an abuſe that the Juſtices drive a true man to be tryed by his Country, where he profereth to defend himſelfe againſt the Approver by battaile.

20 It is an abuſe to force people Appealed by Approvers to Acquittalls, where the Approver put in his Appeales, if he be not thereof elſewhere endicted, or after the lying of the Approver attainted, or after the death of the Approver.

21 It is an abuſe to ſuffer an Approver to live, after he ſhall be attainted of a falſe Appeale.

22 It is an abuſe to ſuffer Theeves, and knowne and notorious Felons to be defended in Sanctuaries.

23 It is an abuſe that thoſe Felons who are forjured the Realme are not ſuffered to chuſe their Port and paſſage out of the Realme, and to limit their Iournies.

24 It is abuſe that they enter into the Sea, and from the Sea, the Church next the Sea, and that enteries into great places are denyed them, and that they have not the priviledge of Pilgrims.

25 It is abuſe to adjudge Murder for default of *Engliſhire*, ſince Murder ought to be the *Engiſh* puniſhment of an Alian.

26 It is an abuſe that Acquittances of paiments made to the King in the Exchequer are by Tallies, and not by the Seale appointed for it.

27 It is abuſe that the Kings Officers of the Exchequer, have Juriſdiction of other things then the Kings Monies, of his fees, and of his Frsnchiſes without an Original Writ out of the Charicety under white Waxe.

28 It is an abuſe that the Kings Debts lye Dormant, and are delayed to be leavied by Eſtreates, ſince the Arreates of Sheriffes, and of other the Kings Receivers are to be leavied without delay upon thoſe who preferre them, if they themſelves be not ſufficient, and the Arrerages of the Debts of others are to be

leavied upon their Sureties where the principalls are not ſufficient to pay the Arrerages; the Amercements are lyable upon the Aſſeſſors if the principalls are not ſufficient, and ſo it is of Fines, and all other the Kings Debts, whereby it appeareth that no Debt ought to be much behinde; is ſo much as ſome thinke that none are chargable with an old debt if not of malice, or by negligence of the Kings Officers.

29 It is an abuſe that they of the Exchequer, or others receive Attornies, or hold Counſans without an Originall Writ out of the Chancery, which none can doe without Juriſdiction.

30 It is an abuſe that Free-men, and Free-holders have ordinary Juriſdiction, but in the Courts of Lords of Mannours, or of Hundreds, or Counties.

31 It is an abuſe to Amerce any man by reaſon of a Preſentment in perſonall Treſpaſſe, in as much as no man is to be Amerced but for the offence in a reall or mixt Action.

32 It is abuſe to Amerce any man by a Preſentment made of leſſe then twelve ſworne Free-men.

33 It is an abuſe to aſſeſſe an Amercement certaine, without the afferment of Free-men ſworne to it.

34 It is an abuſe to afferre Amercements in the abſence of thoſe who are to be Amerced.

35 It is an abuſe to Charge the Jurours

with any Article touching wrong done betwixt neighbour and neighbour.

36 It is abuse to beleeve any one hath Jurisdiction, if a Commission give it not.

37 It is an abuse to obey the Judge who is appealed of doing wrong, the example whereof appeareth in the old Writ of right, *Et nisi feceris vicecomes faciat.*

38 It is abuse that a Free-man be made the Kings Officer by any election against his will.

39 It is an abuse, that the salaries of Pleaders be not certaine.

40 It is an abuse that the Defendants have not amends of wrongfull Plaintiffes.

41 It is abuse that Pleaders are spared of Oathes according to the points.

42 It is abuse to suspend a Pleader if he be not attaint of a Trespasse, for which he is condemnable to Corporall punishment.

43 It is abuse to Summon a man for a personall offence.

44 It is abuse to adjudge a man to death by Suitors, if not in cases so known, that there need no Answer.

45 It is an abuse to bring the Appeale elsewhere then before the Coronet of the County, and that appeareth by the Writ of Appeale, as a Writ grounded upon errour.

46 It is abuse to let to baile a man Appealed, or indicted of a martiall offence by Pledges.

47 It is an abuse to determine the Appeales of felony by Judges, Ordinaries, Suitors.

48 It

48 It is abuse that all persons are commonly receiveable in Appeales of felony.

49 It is abuse that all Infants within age are in Ward.

50 It is an abuse that people may Alien their Inheritances from their Heires further then the grants, or their purchase of Lands make mention, for none can make an Assignee if it bee not specified in the grant.

51 It is abuse that the Inheritances of Heires females are held in Ward (though it be of Knights service) as of Heire Males, since a woman is at age at 14. yeares.

52 It is abuse that Goalers or their soveraignes plunder Prisoners, or take from them other things then their Armes.

53 It is abuse that Prisoners or others for them pay any thing for their entries into the Goale, or for their comming out.

54 It is abuse that a Prisoner is laden with Irons, or put to paine before he be attainted of the felony.

55 It is abuse that the Goales are not delivered of the Prisoners who are deliverable without delay, without a Writ.

56 It is abuse to make a man to Answer to the Kings Suit where he is not indicted, nor appealed.

57 It is abuse to imprison any other then a man indicted or appealed, without a speciall Warrant, in case for want of Pledges or Maine-prisors.

58 It is abuse that Justices deliver Prisoners not taken before the date of their

Warrants, since the Kings intention was not but of those who are then kept in Prison.

59 It is abuse that the Writ of *Odio & Atia* take no place but in Murder.

60 It is abuse that that Writ lyeth for Endictees.

61 It is abuse that Appealees or Endicters of mortall Crime are got out of Prison by Bayle, or those who are condemned to Corporall punishment before they doe their Penance, or that they have bought in the same by Fine and Ransome.

62 It is abuse that the Writs *Sicut alias, & sicut pluries* passe the Seale, in case where it should make those Officers inobedient of right, and to the King, and should charge others to doe such Commandement.

63 It is abuse to put these words in Writs, *Nisi captus sit per speciale preceptum nostrum vel Capitalis Justiciarii nostri vel pro forresta nostra, &c.* for no speciall Commandement ought to exceed the Common Law.

64 It is abuse to suffer the Judges to be Plaintiffes for the King.

65 It is abuse that Aliens, or others who have not sworne fealty to the King, or infamous persons, or Indicted or Appealed of mortall Crime, or who have not an able Commission, or after any wrong done, or after Judgement given, be suffered to have Jurisdiction, or to Judge out of the

the points ſpecified in their Commiſſions.

66 It is abuſe that in Appeales by Pleaders are the Places, and the Countries, and the houres of the daies, and that it is againſt the Peace, ſince every offence is againſt the Peace, and ſuch other words needleſſe.

67 It is abuſe to abate ſufficient Appeales, according to the Statute of *Glouceſter*.

68 It is abuſe that the remediall Writs are ſaleable, and that the King Commands the Sheriffe, that he take Sureties to his uſe for the Writ, for and by the Purchaſe of theſe Writs one may deſtroy his enemy wrongfully; and becauſe that ſuch Fines and Penalties run in Eſtreates, though they doe nothing but hurt to the Purchaſor theref.

69 It is abuſe that Forraigners are not receiveable in Actions by Sureties of Freemen, who have not wherewith to finde Pledges.

70 It is abuſe to diſtreine in perſonall Actions, where the profit of the Iſſues comes to the King, and no profit accrueth to the Plaintiffes.

71 It is abuſe that any Plaint is received to be heard without Sureties preſent, to teſtifie the Plaint to be true.

72 It is abuſe, that it is ſaid that Villinage is not a Franck Tenement, and that an Aſſize lyeth not of an ejection for term of years, as well as it doth of a Franck Tenement for terme of life, or in Fee;

for

for a Villaine and a Slave are not all one, either in name or signification, for as much as every Free-man may hold in Villinage to him and his Heires, performing the services and charges of the Fees.

73 It is abuse to hold that seisin accrued not to the Purchasor when the Donor left his goods, for as a Contract of Marriage is good by the consent of the wills of men and women, although that one of them repent, and after the Marriage would withdraw himselfe, but he cannot thereby dissolve the Contract; so as well it sufficeth to make the Contract by the delivery of seisin as by the celebration of the Marriage, although the Purchasor have no other seisin by taking the Esplees, nor any Deed, nor writing to testifie the bargaine; and if it were that a Woman after the Marriage were ravished and consented thereto, and the Husband repleeve her, and the ravisher answering to the Contract say, That the Husband had no right nor action, because he was never fully seised by taking the Esplees; nor had no Deed: or said, that he was never out of seisin of the Woman because she was clothed with his Robes, and by her robe she remained in his seisin; this Exception nothing availeth him to excuse his wrong no more then in this case. If a man buy a Horse, and agree with the seller, and the seller deliver the same to the buyer, notwithstanding that the seller repent of the bargaine, and forceably take backe the Horse, although

though the buyer hath no Action for the ſame, becauſe he remained alwaies ſeiſed thereof at will; ſuch Exception is not good.

74 It is abuſe to thinke that Contracts for goods not moveables are otherwiſe then for moveable goods.

75 It is abuſe to thinke that ſeiſin accrueth not as ſoone to a Purchaſer of his Purchaſe, as to an Heire of his Inheritance, ſince the Law requires but three things in Contracts. 1. The agreement of the Wills. 2. Satisfaction to the Donor. 3. Delivery of the poſſeſſion and gift. If a tranſmiuration of ſeiſin be given to the Purchaſer by the Donor at the houre of one of the Clocke, and the Purchaſer dyeth at the houre of three of the Clocke he dyeth as well ſeiſed of the Tenement as he ſhould be of a Woman, or a Horſe, though the Donor have not departed with and removed his Chattels: and it ſhall never be a good Plea for him to ſay, That the Free-hold after the tranſmuration of ſeiſin by a ſimple Livery remained in the Donor, after this Livery of the Tenement; but if the agreement of the Donor be not performed according to the Contract, then he may helpe himſelfe thereby.

76 It is abuſe to thinke that one cannot recover a Terme for yeares nor Preſentments to Churches in manner of Diſſeiſin, ſince many Reaſons may availe to Reddiſſeſors.

77 It is abuſe that Attaints are not granted

granted in Chancery without difficulty, to Attaint all false Jurours, as well in all other Actions Personalls, realls and mixt as in Assizes brought.

78. It is abuse to drive a Distresse out of the Hundred.

79 It is abuse to make the view of the Distresse to Bayliffes; in that a Plaint will suffice, and a Court, and that he is yet seised thereof.

80 It is abuse that we doe not sue for a Tortious Distresse by way of Felony, and that one attaint not these Robbers at the Kings Suit.

81 It is abuse that vicious Contracts are by agreements maintained by Law, as if forbidden of offence. Is not Usury an offence? is not Imprisonment an offence? how can one binde himselfe to Usury, or to Imprisonment, or a Disseisin, if he doe not offend.

82 It is abuse that Advowsons of Charters are alienes by Law for yeares in Morgage, or to ferme, or are partible.

83 It is abuse that Leases of Fermes are not longer then forty yeares, since continuance of seisin by length of time doth dis-inherit no man.

84 It is abuse that no Land is let to ferme or in Fee, or for yeares rendring Rent by the yeare, more then the fourth part.

85 It is abuse to Out-law a man for a default, in case where the principall cause is not felony.

86 It

86 It is abuse that Auditors are appointed by the Lords to heare Accompts without the assent of Bayliffes.

87 It is abuse that Bayliffes have no recovery of damages from Tortious Auditors.

88 It is abuse that regard is had to the Persons, when such Law is not for Bayliffes against their Lords, as *è contra* in the right of Debts due by the one to the other.

89 It is abuse that a man may challenge one for his Neife to whom he never found sustinance, in as much as a Villaine is not a Villaine but so long as he remaineth in custody; and since none can challenge his Villain for Villinage though he be in his custody, if he finde not sustenance to his Villaine, or send him to some Land in his Mannour where he may gaine his living, or otherwise retaine him in his service.

90 It is abuse that Villaines are Frank-pledges, or Pledges of Free-men.

91 It is abuse that others suffer Villains to be in their Viewes of Franck-pledges.

92 It is abuse that the Lords suffer their Villaines to plead, or be impleaded without them, for a Villaine is not Amerceable in any other Court because he can lose nothing, as he who hath nothing proper of his owne.

23 It is abuse to hold Villaines for Slaves, and this abuse causeth great destruction of poore people, great poverty, and is a great offence.

94 It

94 It is abuse that a man is Summoned who is no Free-holder.

95 It is abuse to Summon a man elsewhere then in the Land contained in the demand, if it containe Land.

96 It is abuse that a man travaile at his owne Charges, by any Summons personall.

97 It is abuse that a Justice or other make a Summons who is not a Free-holder within the County.

98 It is abuse to Summon men without giving them reasonable warning upon what to Answer.

99 It is abuse that false Causes of Essoignes are admitted, for as much as the Law alloweth falsity in no case.

100 It is abuse that an Essoignor is admitted in a personall Action to the Defendant, since one is Maine-prised to appeare in Court by Maine-prisors.

101 It is an abuse to receive an Essoigne cast in by an infant within age.

102 It is an abuse to receive an Atturny, where no power so to doe is given by Writ out of the Chancery.

103 It is abuse to receive an Atturney, where the Plea is not to be judged in the presence of the Parties, if not in case where one maketh an Atturney generall.

104 It is abuse that none can make an Attuney in personall Actions, where Corporall punishment is to be awarded.

105 It is abuse to receive Exceptions in Judgements if they be not sufficiently pronounced, for from the Order of the

the Exception early ariſeth cleare Judgement.

106 It is abuſe to allow a warrant of Voucher to a Theiſe, or in other perſonall Action.

107 It is abuſe that Judges Aſſigned ſhew not the parties pleading their Warrants, or of his power when they demand it.

108 It is abuſe that Juſtices and their Officers, who kill people by falſe Judgement be not deſtroyed as other murderours, which King *Alfred* cauſed to be done, who cauſed forty foure Juſtices in one yeare to be hanged as murderours for their falſe Judgements.

He hanged *Darling* becauſe he had Judged *Sidulf* to death, for the reteat of *Edulfe* his Son, who afterwards acquitted him of the fact. 1 Darling.

He hanged *Segnor*, who judged *Vlfe* to death after ſufficient acquittall. 2 Segnor.

He hanged *Cadwine*, becauſe that he judged *Hachwy* to death without the conſent of all the Jurours, and whereas he ſtood upon the Jury of twelve men, and becauſe that three would have ſaved him againſt the nine, *Codwine* removed the three, and put others upon the Jury, upon whom *Hachwy* put not himſelfe. 3 Cadwine.

He hanged *Cole*, becauſe he judged *Jve* to death when he was a Mad-man. 4 Cole.

He hanged *Malme*, becauſe he judged *Prat* to death upon a falſe ſuggeſtion that he committed the felony. 5 Malme.

He

6 Athulf. He hanged *Athulf* because he caused *Copping* to be hanged before the age of one and twenty yeares.

7 Markes. He hanged *Markes* because he judged *During* to death by twelve men who were not sworne.

8 Ostline. He hanged *Ostline* because he judged *Seaman* to death by a false Warrant, grounded upon false suggestion, which supposed *Seaman* to be a person in the Warrant which he was not.

9 Billing. He hanged *Billing*, because he judged *Lefton* to death by fraud, in this manner he said to the people, Sir all yee here but he who assisted to kill the man, and because that *Lefton* did not sit with the other he him commanded to be hanged, and said that he did assist, where he knew he did not assisted to kill him.

10 Seafoule. He hanged *Seafoule* because he judged *Ording* to death, for not answering.

11 Thurston He hanged *Thurston* because he judged *Thurguer* to death by a verdict of Enquest, taken *Ex officio* without issue joyned.

12 Athelston. He hanged *Athelston*, because he judged *Herbert* to death for an offence not mortall.

13 Rombold He hanged *Rombold* because he judged *Liflild*, in a case not notorious without Appeale, and without Endictment,

14 Rolfe He hanged *Rolfe*, because he judged *Dunston* to dye for an escape out of prison.

15 Freburne He hanged *Freburne* because he judged *Harpin* to dye, whereas the Jury were in doubt of their Verdict, for in doubtfull causes one ought rather to save then to condemne. He

He hanged *Seabright* who judged *Aiheb* 16 Sea-
bus to death, because he condemned one bright.
by a false judgement mortall.

He hanged *Hale* because he saved *Trif-* 17 Hale.
fram the Sheriffe from death, who took to
the Kings use from another goods against
his will, for as much as any such taking from
another against his will, and Robbery
hath no difference.

He hanged *Arnold* because he saved *Boy-* 18 Arnold.
liffe, who robbed the people by colour of
Distresses, whereof some were by selling
Distresses, some by extortion of Fines, as
if betwixt extortion of Fines, releasing of
tortious Distresses, and Robbery therewere
difference.

He hanged *Erkinwald* because he han- 19 Erkin-
ged *Frankling*, for nought else but because wald.
he taught to him who vanquished by Bat-
taile mortall to say the word of Cravant.

He hanged *Bermond* because he caused 20 Bermond
Garbolt to be beheaded by his Judgement
in *England*, for that for which he was Out-
lawed in *Ireland*.

He hanged *Alkman* because he saved 21 Alkman.
Cateman by colour of Disseisin, who was
attainted of Burglary.

He hanged *Saxmond* because he hanged 22 Saxmond
Barrold in *England*, where the Kings Writ
runneth for a fact which he did in the same
Land where the Kings Writ did not run.

He hanged *Alfet* because he judged a 23 Alfet.
Clerke to death, over whom he had not
cognisance.

He hanged *Piron* because he judged 24 Piron.

Hanting to Death, because he gave judgement in Appeale before the forty daies pendant, the Appeale by a Writ of false judgement before the King.

25 Dilling. He hanged *Diling* because he caused *Eldon* to be hanged, who killed a man by misfortune.

26 Oswin. He hanged *Oswin* because he judged *Fulcher* to death out of Court.

27 Muclin. He hanged *Muclin*, because he hanged *Helgrave* by warrant of indictment not speciall.

28 Horne. He hanged *Horne*, because he hanged *Simin* at daies forbidden.

29 Wolmer. He hanged *Wolmer* because he judged *Graunt* to death by colour of a Larcine of a thing, which he had received by title of baylement,

30 Therbern. He hanged *Therberne* because he judged *Osgot* to death for a Fact, whereof he was acquitted before against the same Plaintiffe, which Acquittance he tendred to averre by Oath, and because he would not averre it by Record, *Therberne* would not allow of the Acquittall which he tendred him.

31 Wolstor. He hanged *Wolstor* because he adjudged *Haubert* to death at the Suit of the King, for a fact which *Haubert* confest, and of which the King gave him his pardon, but he had no Charter thereof, nevertheless he vouched the King to warrant it, and further tendred to averre it by enrolement of the Chancery.

32 Oskitell. He hanged *Oskitell* because he judged *Cathing*

Catling to death, by the Record of the Coroner, whereby Replication allowable the plea did not hold. And the case was such, *Catling* was taken and punished so much, as he confest he had mortally offended, and that to be quitted of the paine; and *Oskitell* adjudged him to death upon his Confession which he had made to the Coroner without triall of the truth of the paine, or the fact. And further, he caused the Coroners and Officers accessories to be apprehended, who hanged the people, and all those who might have hindred the false Judgement, and did not hinder the same in all cases; For he hanged all the Judges who had falsly saved a man guilty of death, or hath falsly hanged any man against Law, or any reasonable Exception.

He hanged the Suitors of *Calevot*, because they had adjudged a man to death in a case not notorious, although he were guilty thereof; for no man can Iudge within the Realme but the King, or his Commissaries, except those Lords in whose Lordships the Kings Writ doth not run. 33 Suitors of Calevot.

He hanged the Suitors of *Dorcester*, because they Iudged a man to death by Iurours in their Liberty, for a felony which he did out of the liberty, and whereof they had not the Counsance by reason of forrainty. 34 Suitors of Dorcester.

He hanged the Suitors of *Cirencester*, because they kept a man so long in Prison, that he dyed in Prison, who would have 35 Suitors of Cirencester.

acquitted himselfe by Forraigners that he offended not feloniously.

36 Suitors of Doncaster. In his time the Suitors of *Doncaster* lost their Iurisdiction, besides other punishments, because they held Pleas forbidden by the Customes of the Realme to Iudges, Ordinaries, and Suitors to hold.

37 Colgrin. In his time *Colgrin* lost his franchise of Enfangtheife, because he would not send a Theife to the common Goale of the County who was taken within his Liberty for a felony done out of the Liberty in Gulldable.

38 Buttolphe In his time *Buttolphe* lost his view of Franck-pledges, because he charged the Iurours with other Articles then those which belonged to the View, and Amerced people in Personall Actions where one was not to be amerced by a pecuniary punishment. And accordingly he caused mortall rewards to Criminall Iudges for wrongfull mortall Iudgements, and so he did for wrongfull Iudgements venialls. Imprisonment for wrongfull Imprisonments, and like for like with the other punishments; for he delivered *Thelwell* to Prison, because he judged men to Prison for an offence not mortall.

39 Lithing. He judged *Lithing* to Prison, because he imprisoned *Herbote* for the offence of his wife.

He judged *Rutwood* to Prison, because he imprisoned *Olde* for the Kings Debt.

On the other side he cut off the hand of

Haulf,

Hanlf, because he saved *Armocks* hand, who was attainted before him that he had feloniously wounded *Richbold*.

He judged *Edulfe* to be wounded, because he judged not *Arnold* to be wounded, who feloniously had wounded *Aldens*.

In lesser Offences he did not meddle with the Judgements, but dis-inherited the Justices, and removed them according to the points of those Statutes in all points where he could understand that they had passed their Jurisdiction, or the bounds of their Delegacy, or of their Commission; or had concealed Fines, or Amercements, or other thing which belonged to the King; or had released or encreased any punishment contrary to Law, or procured the exercising or pleading without Warrant, either in the property by warrant of Writ, or of a plaint of the Possession, or *è contra*; Or in the venitall Actions by words of felony, or *è contrai*, or had sent to no Party a transcript of his Plea at the Journey, or any of the Parties wrongfully grieved, or done any other wrong in dis-allowance of a reasonable Exception of the Parties, or to the Judgement.

In his time every Plaintiffe might have a Commission and a Writ to his Sheriffe, to the Lord of the Fee, or to certaine Justices assigned upon every wrong which was done.

In his time Law was hastened from day to day, so that above fifteen daies there was no default nor Essoigne adjournable.

In his time the parties might carry away the parts of their Pleas under the Seale of the Judges, or the adverse parties.

In his time there was no stay of Writs, all remediall Writs were grantable, as of Debt by vertue of an Oath.

In his time the Iudges used to take twelve pence of every Plaintiffe at the journey.

In his time Plaintiffes recovered not onely damages of the issues of the Possessions, and of the Fees, but recovered Costs as to the hurts, and as much as one might lawfully Taxe, by the occasion of such a fact.

109 It is abuse that such a multitude of Clerks are suffered to be made, whereby the Kings jurisdiction is overthrowne.

110 It is abuse that Clerkes have Leases of that which belongs to the Temporalty, and hold Lay Fees.

111 It is abuse that Pleas hold upon Sundaies, or other daies forbidden, or before Sun rising, or in the night time in dishoneſt places.

112 It is abuse that none answer to a Felony, or other personall Action of trespasse or scandall before his age of one and twenty yeares.

113 It is abuse that when the Action is affirmative to take the proofe against the Answer, or Plea affirmative.

114 It is abuse that a man be accused of life and member, *ex officio*, without suit or without indictments.

115 It is abuse that the Iustices shew not the Endictments to those who are endicted, if they require the same.

116 It is abuse that no man in *England* doth answer for a thing done out of the Realme *Et è contra*, or in a priviledged place, where the Kings Writ runneth not for a thing done to a Forraigner *et è contra*, or within a place within a Franchize, for a thing done in Guildable.

117 It is abuse that Rape is a morrall offence.

118 It is abuse that Rape extends to others then Virgins.

119 It is abuse to Out-law a man if not for felony.

120 It is abuse that one take in *England* any one Out-lawed in *Ireland*, or elsewhere out of the Realme; or that one is put out of his Fee by judgement of Law of Judges Ordinaries, Suiters.

121 It is abuse to count of so long time, whereof none can testifie the hearing or seeing, which is not to endure generally above forty yeares.

122 It is abuse that a man have an Action personall from a longer time then the last Eyre.

123 It is abuse of the Writ of Accompt, for which every one may imprison another wrongfully.

124 It is abuse that one is bound to render an accompt of issues of Land whereof he is Guardian by title of Law.

125 It is abuse that the Writ of *Ne*

cui justè vrxces is so out of use.

126 It is abuse that Battailes be not in personall Actions as well as in Felonies.

127 It is abuse that proofes and purgations be not by the Miracle of God where other proofe faileth.

128 It is abuse to joyne Battaile betwixt persons who are not admitted to wage battaile.

129 It is abuse that a Knight is otherwise armed then another man in a Combate.

130 It is abuse that Judges have Cognizance by originall Writ, or warrant by Vouchers, or in others to which his jurisdiction extendeth not.

131 It is abuse to suffer a Voucher to warranty in the Kings Writ of *Quo warranto.*

132 It is abuse that those who are found Usurers by indictments after their deaths are suffered to be buried in Sanctuaries, and that the Lands doe not escheat to the Lords of the Fees.

133 It is abuse that vicious Obligations drive the Authors to personall Damages, in as much as they are voidables.

134 It is abuse to compell Iurours, Witnesses, to say that which they know not by distresse of Fine and imprisonment after their Verdict, when they could not say any thing.

135 It is abuse to use the words (to their knowledge) in their Oath, to make the Iurours speake upon thoughts, since the

the chiefe words of their Oathes be that they ſpeake the truth.

136 It is abuſe that one examine not the Jurours, though they finde at leaſt two to agree.

137 It is abuſe to put more words in the doing of Homage; but thus, I become your man, for the Laud which I claime to hold of you.

138 It is abuſe to Anſwer or appeare by Atturney.

139 It is abuſe to make Juſtices ſuch parties without the Writ in the Kings preſence, if not with the aſſent of the parties.

140 It is abuſe that the Writs of *Audita quæreta*, and Conſpiracy and others containe not the ſubſtance of the plaints.

141 It is abuſe that the Juſtices of the Bench meddle with more Pleas then of wrong done againſt Fines, Grand Aſſizes, tranſlation of pleas out of lower Courts, and of Darrein preſentment, and of the rights of the King, Queene, and their Allies.

142 It is abuſe to uſe a Pone when their Cauſes are diſcuſſed, if the parties challenge the ſame, for a lying purchaſor ought not to have benefit of his leasings.

143 It is abuſe to ſue forth Grand Diſtreſſes in Pleas of Attachments, whereof the defaults are to the profit of the King, and not of the Plaintiffes.

144 It is abuſe that Treſpaſſours who have nothing are not baniſhed from Townes,

Townes, Counties, Manours, and Hundreds as they used to be.

145 It is abuse to hold that a *Petit Cape* maketh other title but to save every right in reall Action, not in others.

146 It is abuse that the issues of Grand Distresses in mixt Actions come not to the profit of the Lords of the Fees, and others who have Courts, as they doe to the King of Pleas, moved in his Court upon the same Actions.

147 It is abuse to thinke the same punishment is to be to Maine-prisors as to Principals who make default, whereas they are amerceable onely in Courts.

148 It is abuse to amerce a man in plesive of Fee, or of service, going out of the Land by default in a personall Action or reall; for Outlawry or losse of Land is sufficient punishment.

149 It is abuse that Sheriffes doe not execution of Writs *Vice Comitiels*, in as much as the Plaintiffes have found Pledges *De prosequend.* where there is no mention to take Sureties.

150 It is abuse to distreine for Arrerages of services issuing out of Lands moveable goods, whereas no distresse ought to be but in the Land onely.

151 It is abuse that the Tenant may without punishment enfeoffe a third person of the Land, of his Lord in prejudice of him, or doe other thing, or say any thing against the points of his Oath of fealty.

152 It

152 It is abuſe to ſuffer a man who is a Champion to be a witneſſe.

153 It is abuſe that none have recovery of wrong done by the King, or the Queen, but at the Kings pleaſure.

154 It is abuſe to judge a man to divers puniſhments for one Treſpaſſe, as to a corporall puniſhment and to a ranſome, ſince ranſome is but a Redemption from corporall puniſhment by payment of a fine of money.

155 It is abuſe that people defamed of offence are not barred from making oathes, and of their dignities, and of their other Honors.

And divers other abuſes appeare by thoſe who well underſtand the Writ before written.

CHAP. V.

SECT. 2.

The defects of the great Charter.

SEeing how the Law of this Realm founded upon forty points of the Great Charter of Liberties is damnably diſ-uſed by the Governours of the Law, and by Statutes afterwards made contrary to ſome of the points, to ſhew the defects or defaults of the points aforeſaid; and the errours of ſome Statutes I have put in memory this Chapter of the defects and reprehen-

reprehenſions of Statutes, and firſt of the defects of the points of the Great Charter.

To the point, That the Church of *England* ſhall have all her Rights and Liberties inviolable; for firſt it were neceſſary to ordaine a Corporall puniſhment, and namely to the Lay Judges, the Kings Miniſters, and others who Judge Clerkes for mortall Crimes to Corporall puniſhments, infamatories,& doe detain their goods after their purgation, and to thoſe Secular Judges who take upon them Cognizance in cauſes of Matrimony,and Teſtaments,or other ſpeciall things.

The other point is, That every Free-man of the Realme inherite the Liberties of the Charter, and whereof every one is diſſeiſed as of his Free-hold, which is not adjudged according to the points following, there lyeth no recovery of damages by the Aſſize of *Novel Diſſeiſin.*

A third point ſeemeth to be defective, for as the releiſe of an Earldome entire was to decreaſe in him who held leſſe, ſo it ſeemeth that that certainety was to encreaſe as much if an Earle held more, ſo as he who held two Earldoms, and who held an Earldome and a Barony, ſhall pay as an Eardome and as a Barony; and ſo of other Fees if they be not expreſſed in the Charter, that the Fyne of one hundred pound be not an Earldome for no point oncreaſed, and ſo of other cerrainties.

The fourth point is defective (for although

though it be that ſuch a point be grounded upon Law, to binde the Lord of Fees to warranties by taking of ſuch Homages, whether they tooke them of the right Heires or not) becauſe it is not expreſſed who ſhould be Guardian of the Fees in time of vacancy, and have the iſſues in the mean time in caſe where the right Heires fly from their Lords, or cannot or will not doe their homage.

In the points of Wards it is defective, for as much as no difference is expreſſed between the heires Males, and the heires Females, for a woman hath her age when ſhe is fully of fourteen yeares, and the ſeaven yeares beſides were not ordained firſt but for the Males, who before the age of one and twenty yeares were not ſufficient to beare Armes for the defence of the Realme.

And note that every Guardian is chargeable to three things: 1 That he maintaine the infant ſufficiently. 2 That he maintaine his rights and inheritance without waſte, 3. That he anſwer and give ſatisfaction of the Treſpaſſes done by the infants.

The defect of the point of Diſparagements appeareth amongſt the Statutes of *Merton*.

And the default of Franckbenches and Widowes in the ſame manner, in which point it is ſufficiently expreſſed that no woman is dowable if ſhe have not been ſolemnly eſpouſed at the doore of the Monaſtery

nastery and there endowed.

In the point which requireth that the City of *London* have its ancient Liberties, and her free Customes, it is to be interpreted in this manner; That the Citizens have their Liberties whereof they are inherited by lawfull Title of the gifts and confirmations of Kings, which they have not forfeised by any abuse, and that they may have their Liberties and Customes which are sufferable by Law, and not repugnant to the Law. And where it is said (of *London*) that the interpretation be as well of the Cinque Ports, and of other places,

The point which forbiddeth tortious Distresses for Fees is Covenable in it selfe, but the same shal not grieve any man of the Realme who hath Tenements, that it is no Trespasse in him, or by his Ministers, as appeareth in the Chapter of *Nativo habendo.*

The point which forbiddeth that Common Pleas follow not our Court, is to be interpreted in this manner; That the people shall not travail to Sue in the Kings Household in the Country as they used to doe. But this point willeth, that the Plaintiffes have Commissions to Sheriffes, to Lords of Mannours, and to Justices assigned, so that right be done to the parties in certaine places, where the Parties and Jurours may be the lesse travailed.

Although it be that the Chapter command that *Petit* Assizes be taken in their Counties,

Counties, being made for the eaſe of Jurors; yet it is diſuſed, in as much as the Juſtices make the Jurours to come from the furtheſt marches of the Counties, whereas it were better that the Juſtices Rod from Hundred to Hundred, then ſo to travaile the people.

The point of Amercements is miſuſed by Iuſtices, Sheriffes, Bayliffes, Stewards, and others who amerce the people in certaine in this manner, putting ſuch a one to ſo much for a Contempt or other Treſpaſſe without a perſonall Treſpaſſe, and without the afferment of the people ſworn to it, and without ſpecifying the manner and the quality of the Contempt. Cap. 14.

Againe, where the Afferours ought to be choſen with the aſſent of thoſe who are amerced, and in a common place, the Lords make the Afferours to come to their houſes to affer the Amercements according to their pleaſures.

The point which forbiddeth that Rivers be defended is diſuſed, for many Rivers are now appropriate and gotten, and ſo put in defence, which uſed to be common to Fiſh in in the time of King *Hen.* 1. Cap. 16.

The Chapter which forbiddeth that Sheriffes, Conſtables, Coroners, nor Bayliffes ſhall hold Pleas of the Crowne ſeemeth not needfull, for appeales of felony are not here to be brought before Coroners, and the exigents and Iudgements pronounced, and therefore this point had need to have had more words to Cap. 17.

have

have expressed the meaning of it.

For the end of the Chapter of the moveable goods of the dead, it appeareth that the Action accrueth to the Widowes, and to the Children to demand their reasonable parts of the goods of their Father taken away.

Cap. 19, 20. That which is forbidden to Constables to take is forbidden to all men, in as much as there is no difference betwixt taking from another against his will and liberty, whether it be Horses, Victuals, Merchandizes, Carriages, or other manner of goods.

The Chapter for holding the Lands of Felons for a yeare and a day is out of use; for whereas the King ought not to have the waste by Law, or but the yeare in the name of Fine for safeguard of the land from spoile, the Kings Officers take both.

The defence of the Precipe is not holden in that they doe it without Writs of possession of Farmes every day, that the Lords lose the Cognizance of their Fees, and the advantages of their Courts.

The point which commands that one Measure be throughout the whole Realm, and one Weight is dis-used by Merchants, and Burgesses, using for the pound the old Weight of twenty shillings of right Assize, and also of Ells and other measures.

The defence which is made of the Writ *De odio & atia*, that the King be not Chancellor, nor take any thing for granted, the VVrit ought to extend to all remedial VVrits, and the same VVrit ought not extend

extend onely to the felonies of Murder, but it ought to extend to all felonies, and not onely in Appeales but in Endictmenrs.

The point which forbiddeth that no Bayliffe put a Free-man to his Oath without Suit, is to be understood in this manner, That no Justice, no Minister of the King, nor other Steward nor Bayliffe have power to make a Free-man make Oath without the Kings Command, nor receive any plaint without Witnesses present who testifie the plaint to be true.

The point where the King granteth that he will not disseise, nor imprison, nor destroy, but by lawfull Iudgement, which overthrows the Statute of Merchants and other Statutes is to be interpreted thus, that none be arrested, if not by warrant grounded upon a personal Action, for if the Action be veniall, no Imprisonment is justifiable, if not for default of Maine-pernors. And so it appeareth that none is imprisonable for Debt. And if any Statute be made repugnant to this point, either for the Kings Debt, or for the Debt of any other, it is not to be kept. That (none be Outlawed) is to be meant, if not for mortall felony, from which one is saved by the Oath of Neighbours, *ex officio*, as it is the use in Eyres; and therefore that destroyeth the Srature of Outlawry of a man for arrerages of Accompt, and all other the like Statutes; and that which is said, that none be (exiled nor destroyed) is to be interpreted

in this manner, that every one have an Action to appeale all Persons, all Suitors, all Assessors who destroy men against the right course, and against the rules of Law.

On the other part, where the King forbideth that none be disseised of his Free-hold, of his Liberties, or of his free Customes is thus to be understood, that one shall recover by Assize of *Novel disseisin* every manner of Free-hold, and all manner of Possession reall of Lands, or of Franchises whereout one is cast, if it be not by lawfull Iudgement; and these words (if it be not by lawfull Iudgement) referre to all the words of this Statute.

The point which the King grants to the people, that he will sell no Right, or hurt nor delay Iustice, is misused by the Chancellour, who seils the remediall Writs, and calls them Writs of Grace, & by the Chancellour of the Exchequer who denyeth Acquittances of payments made to the King under Green Waxe, and all those who delay right judgement or other right.

The point concerning leave for the staying of Merchants, Aliens, is so to be understood, that it be not prejudiciall to the Townes, nor to the Merchants of *England*, and that they be sworne to the King if they stay longer then forty daies.

The point which forbiddeth that none Allien his Land in prejudice of the Lord of the Fee, is to be interpreted in this manner, that no Tenant allien the Fee of his

his Lord without his consent, or to hold in chiefe of the Lord without encreaſe of new ſervice.

The point of the cuſtody of Abbies, and of religious places when they fall is thus to be underſtood, that every Lord have the keeping of his Fee during the Vacation.

The point that none ſhall be taken or impriſoned upon the appeale of any woman, for the death of any other then of her Husband, is to be meant of ſuch a woman which the Husband laſt held for his wife, if in caſe there be many wives alive.

The points concerning Sheriffes Turnes and Viewes of Franck-pledges are diſuſed three waies; the firſt that Sheriffes, Bayliffes, and Stewards take extortion of Fines, in that they make the people to fine for what they are not occaſioned which they call for Beaupleader. The ſecond, that they amerce the people for Preſentments upon perſonall Actions. The third is, that they charge the Iurours with Articles touching Treſpaſſe done by Neighbour to Neighbour, or of Tenant, or of other Lord then to the King.

The point which forbiddeth religious perſons to purchaſe Lands, overthroweth the Statute afterward made at *Weſtminſter* of the ſame, for as much as the Action of the chiefe Lord is limited in ſo ſhort time, to haſten the Kings Action in prejudice of the Lords of the Fee.

The laſt point is of ſuch vertue and of ſuch meaning as that the King hath the Cogniſance of Treſpaſſes done in ſuch manner, as that the Fee-Tenants have their Courts, and the Cogniſance of Treſpaſſes done within their Mannours, and alſo as well of reall Actions, and Perſonalls, as of mixt.

CHAP. V.

SECT. 2.

The Articles upon the Statute of Merton.

SOme points are reproveable amongſt the Statutes made at Merton after the Great Charter made, and namely the point of Rediſſeiſins. Since the Law doth not attaint any Treſpaſſor by enqueſt of Office, and becauſe Pleas may perhaps availe the Tenants, and ſhould be by Law allowable, Aſſizes lye to the example of Novel Diſſeiſin; and where it is ſaid, that Rediſſeiſors be arreſted and kept in Priſon, and afterwards that they be releaſed is but an abuſe of the Law, which requireth that every one who is attainted of a perſonall Treſpaſſe be puniſhed by a Corporall puniſhment, if he cannot ranſome it by money; and that which is ſaid of this Statute is to be underſtood of all Statutes made after the Great Charter, made

made in the time of King *Hen.* the 1. for it is not Juſtice that he ſhould be puniſhed for one fault with Corporall puniſhment, as impriſonment or other, and further by a pecuniary paine, or by ranſome; for ranſome is nothing but a buying out the Corporall puniſhment.

The point of Improvements of Waſts is reproveable as being too generall, for it ought to diſtinguiſh of Commons; for in ſome places the Commonors are infeoffed in ſuch manner that the whole Common is onely in the Tenants, ſo that the Lords have nothing but the ſoile, and in ſuch caſe that Statute is prejudiciall to the Commoners, and repugnant to the Great Charter, which willeth that none be caſt out of his Free-hold, nor the appurtenances without lawfull judgement.

The point of Rape of Marriages is reproveable, in as much that it hath an Exception of Perſons of Laymen, and of Clerkes, for there is no more Law that a Clerke ſhould offend without puniſhment then a Lay man.

Other points are repugnable; If the Tenant doe damage to his Lord, or *è contra*, for they are not puniſhable according to the Statute, but they are bound by their Homage and Fealty betwixt them, as it is before ſaid amongſt the judgements of defaults.

The points of making Atturnies in Suits at Hundreds is to be underſtood in this manner; That although a Suitor by this

Statute may make an Atturney for him to ſave his default, yet none can give Judgement by Atturney; nor is a Woman named in this Statute, becauſe that no judgement is to be given by a Woman.

CHAP. V.

SECT. 3.

Of the Statutes of Marle-bridge.

SOme points of the Statutes of Marle-bridge are reproveable, and namely the firſt five points, becauſe that every perſonall Treſpaſſe is puniſhable by a Corporall puniſhment if the Treſpaſſe be not bought in by ranſome according to the quantity thereof.

The Chapter which commandeth the Great Charter to be kept in all points is defective for want of addition of puniſhment, and it ſeemes croſſe to make conſtitutions not holden.

The Chapters remedialls of Lords of Fees is reproveable in the mittigation of puniſhment: For all thoſe who doe defraud the Law are puniſhable by a Corporall puniſhment, and not by a ſimple Amercement.

The point of Proclamation of Wards is reproveable, as that which is founded upon

upon Errour, as it appeareth in the Chapter of defaults.

The Chapter of Rediſſeiſors is reproveable, for that no ſpeciall command ought to exceed Common Right, nor any paine of impriſonment is judgeable but for a wrongfull impriſonment.

The Chapter of daies in Dower is reproveable, ſince the Law haſteneth right more in the Kings Court then elſewhere.

The Chapters following of Attachments and Diſtreſſes are reproveable, for in pleas of Attachments no Eſſoigne is allowable for the Defendants, nor any ſuch order of diſtreſſes is to be holden according to Law.

The Chapter which forbiddeth that none make his Tenants Jurours is reproveable, becauſe that no puniſhment is therein ordained, and becauſe it hath no Exception; for there are many Caſes where the people ought to be Jurours though they come not by the Kings Command, as before Juſtices of Forreſts, before Coroners, and before Eſchearors, and as in Courts of Sheriffes and Viewes of Frankpledges, and as Afferrours, and at Goale deliveries.

The Chapter which commandeth the arreſting of thoſe who are bound to Accompt is reproveable, ſince the Action is mixt, and requireth Summons, and not perſonall Arreſts.

The Chapter of waſters of Farmes is reproveable, for waſte is a perſonall Treſ-

paſſe, and requireth a perſonall puniſhment, and not a ſimple Amercement.

CHAP. V.

SECT. 4.

Articles upon the Statute of Weſtminſter, the firſt.

MAny Chapters are reproveable of the Statute of *Weſtminſter*. For the points touching religious Perſons are matter to gaine monies, and a purchaſe upon a foundation of covetouſneſſe, more then for their advantage.

The Chapter of Clerkes found guilty of felony is reproveable, for for want of addition of puniſhment theſe Clerkes are not to be delivered to Ordinaries, but at the pleaſure of the King, and of his Juſtices.

The Chapter of Wreck is reproveable, in as much as the finder is forjudged by the Statute to have part thereof, whereas he ought to have part of the profit, and ſo it is reproveable, as to the awarding of the puniſhment.

Of the points of Amercements is before ſpoken in the Great Charter.

Cap. 9. The point of takings of diſtreſſe is much reproveable, as before is ſaid.

The Chapter concerning purſuing of Felons to maintaine the Peace is reproveable in

in the puniſhment, for he is conſenting to a Felon who doth not apprehend him when he may.

In the ſame manner is it of the Chapter of Coroners, contained in the Articles following.

The point of Election of Coroners was not needfull to have been ordained, for it behoveth more the Electors to have wiſe and loyall Coroners then to the King, and it had better have been enacted that the Coroners doe preſent the points of their Office under the Seales of the Jurours, then Sheriffes ſhould make counter parts of the Rolls. Cap.

The point of Enqueſt of *Odio & atia* is reproveable, for *London* and other places in Liberties where there are no Knights. Cap. 12.

The point of putting people found guilty of felony, who will not put themſelves upon the Country to pennance, it is out of uſe that one kill them, without having regard to the conditions of the Perſons, and therein it is reproveable, ſince one may perhaps helpe and acquit himſelfe otherwaies then by his Country, and in as much as none is to be put to Pennance before he be attainted of the offence for which he ought to be pained.

The Ordinances of puniſhments of long impriſonment are to be reprehended as before is ſaid.

The point of the order of Outlawry of the principalls before the Acceſſories is no Statute, but a revocation of errour.

The

The point of Repleviſalls is reproveable, according as it is ſaid of Actions; the puniſhment of long impriſonment containe Errour as is ſaid before.

The puniſhment of Heires males Married, as againſt the King, without the conſent of their Lords, betwixt 14. yeares and 21. yeares is reproveable, for then the King ſhould have amends for that, for which he hath not any perſonall Suit for the amends.

The point of Heires females containeth Errour, as appeareth in the reprehenſion of the point of Marriages in the Great Charter.

The point of tortious Diſtreſſes ought to contain the puniſhment for the robbery.

The puniſhment of Miniſters, Diſſeiſors by colour of their Office is reproveable for the ſmalneſſe of it, as appeareth amongſt the Judgements.

The point which forbiddeth Sheriffes that they take no rewards is reproveable in as much as the King taketh of them, and they take nothing of the King.

The point of Fines of Clerkes, and the officers of Juſtices in Eyre is reproveable, for the common grievance of the people without taking of profit.

The points of impriſonment are reproveable for the reaſons aforeſaid, and the point of Tolls for the puniſhment of impriſonment, and becauſe Tolls are not eſtabliſhed certaine.

The point which willeth that thoſe who

diſ-uſe

dis-use Marriages should lose them, was not needfull to have been made, for the Law is, that he shall lose his Franchise who useth it not.

The point of the Receivers of the Kings monies and not rendring the same is reproveable, for the smallnesse of the punishment, according to that which appeareth before.

The Errours of taking of Carriages and other goods appeareth sufficiently by the reasons before.

The point which forbiddeth Judgement to be given by Strangers in Counties is reproveable, for no Iudgement given by another then an ordinary Judge assigned is to hold.

The point which maketh mention of Robbery, or Disseisins is reproveable, for all those are to be seised upon who the Jurours indict of Robbery, according to the example of Theeves and other Felons.

The point of Attaint is reproveable, for it should not extend to one case, but it ought to comprehend all Oathes taken by twelve men if one of the Parties complaine thereof.

The point of limitations of Actions is reproveable, for the reasons in the Chapter given upon the same matter.

The point which forbiddeth falsities and abuses used in Courts before this time to false Judges, who used not the Law by sufferance of falsities.

The point of Champions is reproveable, for

for no Champion is to be receiveable as a witneſſe.

The point of not allowing Eſſoignes in Aſſizes after appearance, is reproveable by the Aſſize of Novel diſſeiſin, where no Eſſoigne is allowable for the Tenants no more before appearance then after, nor in no other perſonall Action.

The other points of Eſſoignes are reproveable, for no falſe cauſe of Eſſoigne ought to advantage any man.

The point of delaies in Pleas of Attachment is reproveable in many points, accordingas appearethin the chapter of defaults.

The point to plead upon the ſurcharge falleth in prejudice of Sheriffes, and of Lords of Fees, and of Liberties; and although the two points of Diſſeiſins, that is to ſay, that every one may avoid the damages in the point of perſonall treſpaſſe done to his Anceſters in as much as his Action lyeth, of what age ſoever the Parties be, yet is the firſt reproveable, for as much as the Plaintiffes have no recovery for the damages done to their Anceſtors, nor any Action, but to have reſtitution of the poſſeſſion.

The other point is reproveable for the ſmallneſſe of the puniſhment, but according to common right this puniſhment ſhould have time, that he ſhould never doe Homage betwixt them for the Lords forfeiture, when he beginneth to diſ-inherite his Tenant contrary to the right of Homage.

The

The Prayer of the King is reproveable, becauſe he ought to aske nothing contrary to Law, but it is the prayer of the Juſtices who deſire alwaies to have much to doe.

The point that if he who is vouched to warranty ought not to warrant, although he be bounden by the deed of his Anceſtor whoſe Heire he is, in caſe he alledge that nothing deſcended to him from that Anceſtor by whoſe deed he is vouched is reproveable, for according to the old Law, Lands remained liable to the Debt of thoſe who acknowledged it, to whoſe hands ſoever the Lands afterwards came.

In the ſame manner it uſed to be in all other Contracts, where the Contracts were adjudged or granted; and although nothing deſcended to the Heire for that he loſt not the Tenements for want of Acquittance, and if he who bound himſelfe to warranty would not warrant the Land, nor vouch over, it appeareth thereby that the Anceſtor was Tenant by a naughty title, and that he was poſſeſſor thereof by an ill way; and if the Heire had nothing whereby to diſcharge him, the Tenements bound to warranty ſhould be recovered. And if the Heire had nothing whereby to diſcharge, nor no Land is found bound to the warranty, if the Purchaſor loſt his purchaſe it was at his owne perill, and accounted his owne folly, the better at any other time to looke to his aſſurance.

CHAP

CHAP. V.

SECT. 5.

Articles upon the Statute of Weſtminſter, 2.

THat which is ſaid of the Statute of *Weſtminſter* 2. which faileth in many caſes is now to be underſtood, for againſt all Treſpaſſes is the Law made although it be diſ-uſed, or controuled by thoſe who know not the Law.

And the three firſt Chapters are not Statutes, but are the revocations of the Errours of negligent Judges, for the Law permits not that a man make a better eſtate to another then himſelfe hath, but requireth that every lawfull Contract be made according to the wills of the ſpeakers; and that which is in the Statute, that if a Fine be leavied in deceit of right, that the ſame be *null* is reproveable; but it might have been better ſaid, That for that Fine, that no man be barred of his right, for the Fine leavied cannot be rightly ſaid *null*, but it holds in force, and barreth at the leaſt the Donor of his Action.

The point if Diſtreſſes doth not repeale any Errour, but affirme them, as before appeareth in the ſecond booke.

And that which is ſaid in the ſecond Statute, that Suitors in Counties have no Record

Record, is but abuſion, ſince every lawfull teſtimony is a Record, and every falſe teſtimony is a lye; and as lawfull may other people teſtifie as the Juſtices aſſigned. Is not the ſame Writ abuſed, to grant to Counties Records in Outlawries, Pledges, Maine-priſes, Battailes, Grand Aſſizes and other Caſes, and not other points, and to deny that the Sheriffes or Lord of the Fee, or other to whom the King ſendeth his Writ, hath not as well Record of Proceſſe before him, as thoſe whom they call Iuſtices, is but Errour?

And as to the cauſes of Writs of paines is ſuffered great Errour, that that which is not warranted in the Acceſſory, that he may in the principall, ſince the Law permits that none be aided by a lye or a vicious Writ.

Of the other ſide, becauſe there is more realty in the Statute then perſonalty, as more Attachments are awarded in perſonall Actions then in mixt and realls.

The point of Meaſnes is reproveable, as to the Proclamation, and as to the *non*-acquittance of thoſe who hold by leſſe ſervice then the Meaſnes, for be it that *B.* hold one hundred pound Land of *D.* by the ſervice of twenty pound *per annum*, and the ſame *B.* give the moyety thereof in Frankalmoigne, or Frankmarriage, or to hold by the ſervice of a Roſe to *C.* if it happen that the ſame *B.* forfeited what he hath, by this Statute no remedy is ordained for *C.* who was purchaſor from *B.*

and

and therefore the old course is to be holden which is said before in Iudgements.

The remediall Stature of the right of the Wife lost by the default of the Husband is reproveable, for the old Law was, that a woman after the death of her Husband should repleeve her Inheritance or purchase so lost, summoning the Tenants, for a Cape is not, but a distresse and ejection of seasin saving every right; and it is lawfull for one of the Tenants in common to defend his right where he is damnified by the negligence or the *non* ability of his Partner. In the same manner may a Woman according to Law in the right of her Husband; neither doth the Law give to Widowes Action to demand Dower in the cases named in the Stature, but in all cases the Law enables her to be received by Lawfull reversing of the Iudgement.

And that which is contained that Tenants may vouch to warranty, is but abuse; how holdeth voucher place where a Writ lyeth not; yet is it understood with a saving, that no jurisdiction of a Iudge assigned extend to other Persons then those who are named in the Writ, and that none shall vouch more then in the same Writ are named, by Writ of *Replegiare*, and therefore are warranties attainable and dererminable by Writs.

The Stature following, which Ordaineth new Writs remedialls after defaults, is prejudiciall to Lords of Fees, who lose the

the advantages of their Courts, becauſe that Writs of Right are forbidden in ſuch caſes where they wont to be uſed.

Preſentments to Churches ought not to be but in the names of thoſe to whom the meere right of the Advowſon doth belong, according as is ſaid before in Contracts; and it is errour and abuſion of Law to endow women of Advowſons, or to Leaſe them to Farme, or for the terme of anothers life, or in Frank-marriage, or in Mortgage, or in Fee-tayle, or otherwiſe then in Fee-ſimple.

And thoſe who receive Clerkes preſented to Churches, in prejudice of thoſe to whom the meere right in Fee doth appertaine, are bound to make reſtitution of the damages, and thoſe who have recovered to Jurours by whom they were certified of the right of the perſonage; and ſo it appeareth that the puniſhment lyeth more againſt the Biſhops then the preſentors.

And that which enacteth long Impriſonment for a puniſhment, is but abuſe; ſince none is impriſonable if not for a wrongfull impriſonment.

The Statute of Warranties is but a revocation of Errour uſed againſt Law.

The Statute of Admeaſurement is reproveable in many points, as to the Proclamations, ſince admeaſurement and ſurcharge are to be by Jurours.

The Statute of Meaſnes is reproveable in many points, as it appeareth in the

Chapter of Diſtreſſes, Contracts, and defaults, and the ſame appeareth in the end of the Statute where the Plaintiffes know not a ſet fine.

The Statute of ſuſpenſion of Writs in Eyres is reproveable, as repugnant to the great Charter, which ſaith, we will ſell no Right, nor detaine it, and wherefore are Writs rebuttable from hearing but for the multitude of Writs which are, and for the ſmall number of Juſtices the right of many periſh.

The Statute of obligees in Accompt is reproveable in many points, one as to the exception to the Perſons, for the Maſters is ordained recovery, and to Serjeants not, when Auditors are aſſigned without the conſent of the ſervants.

The other, that the Auditors are not tyed to allow any thing but at their pleaſure without puniſhment.

Another, that the recovery is ordained by detinue of the ſervants, and nor againſt the Surety, nor the goods.

Another, that the Lords are not to be Atteſted according as of the ſervants.

Another, that the wickedneſſe of Auditors remaineth unpuniſhed.

Another of Outlawry, for none is to be impriſoned if not for a tortious impriſonment.

The Statute of Appeales is reproveable in two points, one in the ſpecialty of the Corporall puniſhment, and of the Plurality puniſhments, ſince the redemption by a pecuniary

pecuniary paine is but the buying out of the Corporall puniſhment.

The other to have juriſdiction againſt the Abettors without originall Writ.

The Statutes of Waſte are founded upon Errour ſince waſte is a perſonall Treſpaſſe, and requireth other manner of Proceſſes, as appeareth in the Chapter of defaults; and to defend a perſonall Treſpaſſe by Writ is but a vaine labour.

The Statute of not allowing a falſe cauſe in the Eſſoigne *De malo lecti* is defective, for in no Eſſoigne for no Party is any falſe cauſe, or any falſity to be permitted, nor ought to be profitable to any.

The Statute of Debt and Damages recovered is defective, for not onely ſhould ſuch remedy be in the Kings Courts, but it ought to comprehend in all other Lay Courts.

The Statute of thoſe who are dead without Wills is defective, for it ought to comprehend Felons, and Fugitives as well as true men; and the King, and all others into whoſe hands their goods come as well as Ordinaries, for none can forfeit the right of another.

The Statute for allowing one manner of Exception in the like Actions was not needfull to have been made if not for the negligence of Juſtices, for every affirmative is encounterable with his negative at the perill of the party.

The Statute of detinue of ſervice is a novelty dangerous to Lords of Fees, as

ppeareth in the Chapter of defaults.

The Chapter of making new Writs had not need to have been made, if the first Ordinances of Writs were obſerved.

The Statute to have remedy by Aſſize, of *Novel diſſeiſm* is reproveable, for as much as it comprehendeth not Lands charged with Villain Cuſtomes, nor Lands holden for terme of yeares.

The point needed not have forbidden falſe Exceptions, if the Pleaders held themſelves to the points given in charge.

And as to the point of Impriſonment, the Statute is reproveable for the reaſons aforeſaid, and alſo as to the paine of double damages, for the Law giveth a man no more then is his demand.

And that which appeareth in the Statute of falſe Appeales is more errour then right in the enacting the award of amends to Defendants, whereas it is not to the Plaintiffes.

And as to the Writ to the uſe of Sheriffes in Diſſeiſins, it is no Statute, but it is a thing at pleaſure, and a wrong.

And that which is uſed to grant Damages in part, or in all to Juſtices, or to Clerkes, or to Miniſters, or others ſhould be forbidden, as a uſage very full of damage to the people.

And as puniſhments are reproveable in *Novel Diſſeiſins*, ſo are they in the Statutes of Diſſeiſins, Corporall puniſhments neverthe'eſſe hold in ſuch perſonall Treſpaſſes, but in Reddiſſeiſins more then in Diſſeiſins.

The

The Statute which forbiddeth that Writs of *Oyer* and *Terminer* be not *Ligirment* granted is not founded upon any Law, as being repugnant to the words of the Great Charter, We will not ſell or delay Juſtice to any man; but commeth rather from the temporall Iudges, who cauſe the ſame for their advantages, as deſiring to embrace all Pleas. Eaſily.

The Statute of Caption of Aſſizes thrice in the yeare is reproveable, as to the adjournment of the Parties out of the Counties before the Iuſtices of the Bench, who have no jurisdiction over thoſe Pleas, ſince the Commiſſions are given to Iuſtices aſſigned.

And as to take Iuries and Enqueſts in their Counties, ſo the Statute is not to deſtroy the Authours and indamage the people.

The Statute which forbiddeth Iuſtices that they cauſe not Iurours ſay, but their advice is defective, as appeareth in the Chapter of Iurours.

The Statute of Exceptions allowables rebutted by Iuſtices is not founded upon Law, as appeareth in the Iudgement of falſe Iuſtices, but is when it is in no part fixt.

The Statute of Rape is reproveable, for none can ordaine by Statute that a veniall puniſhment be turned into a mortall, without the conſent of the Pope, or the Emperour.

The Statute that the King hath the Suit

in Rape, or in Ellopment of women Married is reproveable, for none is bounden to Answer to the Kings Suit if not by Appeale, or by Indictment.

And that which is contained in it, That Women should lose their Dower for the sinne of Adultery, ought also to comprehend all Adulterours, who claime to hold the inheritances of their Wives by the courtesie of *England*, so that there be no exception of persons.

The imprisonment of the Alloppors of Nunnes and their ransome is no Law, but is an errour in a double manner, as before is said in many places.

The imprisonment for two yeares or more, ordained for a Corporall punishment to Ravishers of Marriages is but errour, for no Corporall punishment ought to be ordained but for common profit, as before appeareth of open Penances.

And that which is ordained of Proclamations in personall Actions is but abuse of Law, as it is said in the Statute of Moignes.

The Statute which awardeth Ransome is reproveable, for Ransome is nothing else then the redemption of Corporall punishment.

The Statute of Distresses made by Bayliffes unknowne is distinguishable, for in tortious Distresses without warrant the Iudgement of Robbery holdeth; and by warrant is every one receiveable, whether knowne or unknowne.

The

The Statute of Iurours is reproveable, for the Law wills that the Plaintiffes have the aide of the Courts to cauſe the Witneſſes to appeare, whereby they may the more lawfully helpe themſelves without diſtinction of perſons.

And that, that juriſdiction is granted to Juſtices aſſigned to *Oyer* and *Terminer* Plaints, without a ſpeciall Commiſſion is but abuſe.

The Statute which awardeth that Writ of Judgement be made without warrant of originall Writ is nothing elſe then a Licence to falſifie the Kings Seale.

The puniſhment of Sheriffes ill anſwering is reproveable, as to the puniſhment; for diſ-inheritors of the King offend of the crime of Majeſty, and are by conſequence puniſhable by death, which ought not to be in ſuch caſes.

And as to iſſues the Statute is reproveable, for no iſſues are awardable but after defaults in Actions mixt, and not to the Kings uſe, but for the profits of the Plaintiffes.

The defaults made of the Statutes of Clerkes, Cryers, and other Officers of the Court are but idle, becauſe they are not kept at all.

The Statute that Cognizances and Enrolements which are made in the Chancery, the Exchequer, and before Iuſtices be eſtabliſhed is an Authority of great ill; for by falſe enrolements might every one in Authority deſtroy thoſe he pleaſed,

which ſhould be a great inconveniency. Againe, by this Statute Authority ſhould accrue to Authority to the Chancellor and others to falſifie the Kings Seale by Writs, to give judgement without originall Writs.

And therefore note, that none but the King can receive Atturnies in the Kings Court, nor recognitions bitwixt Parties without warrants of originall Writs.

The Statute of improvements of waſts and commons of Paſture is reproveable, and diſtinguiſhable according as hath been ſaid before.

The Statute to have view of Lands is but a wrongfull delay of the tight of the Plaintiffes; for the View appeareth ſufficient by the Certificate of the Summons, upon what Tenements the Tenants are ſummoned.

The Statute which forbiddeth that no Officer of the Court take any preſentment of any Church, nor other thing which is depending in Plea, or in debate is not kept.

Reprehenſions upon the Statute of Glouceſter, 1 6. *E.* 1.

THe Statutes to recover Damages in Pleas of poſſeſſion enacted at *Glouceſter* or elſe where, and of the horrible damages in waſte are reproveeble, for that the

the Law giveth one no more then is his demand, and therefore it behooveth that the damages be mentioned in the Writs if damages ſhall be awarded; for a Judge cannot exceed the points of his Commiſſion, and ſo it would be needfull to uſe it according to the firſt Ordinance of Writs.

And the Statute of Tenements alliened of Lands in prejudice of others is reproveable, for the remedy ought to be ſuch as of Guardians allienors, to the diſ-inheriſon of the right Heires.

The Statute of Treſpaſſe pleaded in Counties is reproveable for want of diſtinction, for ſmall Treſpaſſes, Debts, Covenants broken, and ſuch other kinds not exceeding forty ſhillings. Suitors have power to heare and determine without Writs, by warrant of juriſdiction Ordinary, and by Writs granted afterwards; for Sheriffes have more juriſdiction in their Writs vicontiell then Juſtices of the Bench by the Pone.

And as to the recovery of twenty ſhillings or more in right of Eſſoigne of the Kings ſervice not warranted the Statute is reproveable; for that Eſſoigne might be caſt where the Defendant would make default by the adverſe Party, and ſo he ſhould have advantage of his malice.

The Statute which forbiddeth the abatement of Appeales is not obſerved.

The Statute which awardeth an innocent man to remaine in Priſon, or to have no

no manner of punishment for necessary Man-slaughter; or by mischance, where no offence is found, is but an abusion.

The Statutes making mention of *London* ought to extend commonly throughout the whole Realme.

CHAP. V.

SECT. 6.

The reprehensions of Circumspectè agates, *An.* 13. E. 1.

THe first point which saith, That the Kings prohibition holds not in correction of mortall offences where a pecuniary paine is enjoyneable by Ordinaries, is founded upon open errour, and usage to enjoyne a pecuniary paine for a mortall offence, notwithstanding to destroy the Kings jurisdiction.

The other points to compell the Parishioners by corrections to enclose Churchyards, to offer, to give Mortuaries, Monies for Confessions, Chalices, Lights, Holy Vestments, and other adornement of Churches are more grounded upon interest then amendment of soules; and note, that after that they are offered to God, that they are so spirituall that they are to be expended but in Almes, and spiritually, for they are never to be converted to Lay uses.

And

And then if any Pariſhioner for the hurt of the Parſon of the Church keepeth back his Tithes, or ſtealeth them away, or doth not pay them duly or fully, the ſame is not puniſhable by a pecuniary paine, but by a corporall puniſhment.

For the Excommunicate no pecuniall paine was to be for reſtitution or ſatisfaction, no more then of a Pagan or a Jew, and if they doe demand a pecuniary paine, there the Kings Prohibition lyeth, and much more in the demand of Penſions, or of damages of Treſpaſſe, or of defamation; but of Pleas of correction where one Pleades onely *Pro ſalute animæ*, the Kings prohibition lyeth not.

CHAP. V.

SECT. 7.

THe new Statute of Debts is contrary to Law, as it appeareth in the Chapter of Contracts; for every impriſonment of the body of a man is an offeace if not for tortious Judgement, and the Law will not ſuffer any Obligation, or vicious Contract by intermixture of offence, and therefore it was to be avoided as grounded upon an offence; for no honeſt man ought to agree to ſuch a Contract which

which cauſeth him to offend, or to be puniſhed.

Againe, it is contrary to the Great Charter which enacteth, that no man be taken, nor impriſoned if not by the lawfull judgement of his Peeres, or by the Law of the Land.

Here endeth the *Mirrour of Juſtices*, of the right Lawes of Perſons according to the ancient uſages of *England*.

The end of the fifth Chapter, and of the whole Booke.

FINIS.

THE BOOKE

Called, The

Diversity of Courts,

And

Their Jurisdictions.

Written by an unknown Author in the time of King *Henry* the Eighth, in the *French* Tongue.

Wherein many necessary and profitable things ate contained.

Translated out of the *French* Tongue into *English* for the use of many.

By *W. H.* of Grays Inne Esquire.

Imprinted at *London* for *Matthew Walbancke*, and are to be sold at his Shop at Graies Inne gate, 1646.

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The Booke called, The diverſity of Courts, and their Juriſdictions.

IT is to be underſtood that the King is the fountaine of Juſtice, and to that purpoſe ordayneth Judges, that Juſtice be adminiſtred to all his Subjects.

The King himſelfe for the excellency of his Perſon may ſit and give Judgement in all Cauſes perſonall or reall, betwixt Party and Party, but he cannot ſit in Perſon in Judgement in any Cauſe where he himſelfe is Party, or where the things of his Crowne or Dignity are concerned, as upon an Indictment of Treaſon, or upon an appeale of Murder or Felony, or upon an Action brought by himſelfe, as Formdon of Land, of which the right is deſcended to him from a collaterall Anceſter, or in an Action of Debt, by reaſon of the affection moving him to be favourable to himſelfe; and therefore he maketh his Iudges to ſit and heare ſuch matters in difference, and to doe juſtice to the parties.

And

And the place where the Judges ſit to miniſter Juſtice are called Courts, which are of divers kinds, and the Judges thereof have ſeverall Authority.

Of the Court of Marſhalſey.

AND firſt, the Court of Marſhalſey is an ancient Court, and made for the well government and ordering of the Kings houſe, for the preſervation of the King and his Servants; and this Court hath its bounds within which it hath juriſdiction, and not without.

The Iudges of this Court are the Steward and Marſhall of the Kings houſe, for in them under the King is the ordering of the houſhold, &c.

The title of the Court is, *Placita Corone aula Hoſpitii Domini Regis teat coram ſeneſchallo & mareſchallo hoſpitii Domini Regis, &c.*

And this Court hath power to enquire of Treaſon, Murder, and Felony, and to take Appeales of them, and of Mayhem if they be done within the Virge, betwixt perſons who are of the Kings houſe.

And if one of the houſhold Sueth another who is not of the houſhold, he may plead to the juriſdiction of the Court; and if they will not allow of the Plea, he ſhall have a Writ of Errour, and the Iudgement ſhall be reverſed in the Kings Bench.

And if one of the houſhold ſueth another

ther of the houſhold, and the Plaintiffe be put from his ſervice depending the Suit, the other ſhall ſhew the ſame and abate the Writ; but quere if it be ſo, if in caſe the Defendant be removed out of ſervice, &c.

The Coroner of the Marſhalſey ſhall ſit with the Coroner of the Country upon the death of a man, and if the Plea may be determined before the King remove out of the Virge it ſhall be, otherwiſe it ſhall be at the Common Law.

The Kings Bench.

THere is another Court of high Authority called the Kings Bench, and the Iudges of that Court have Authority to enquire of, heare, and determine Pleas and things touching the Crowne; as High Treaſon, Murder, Man-ſlaughter, Robberies, Felonies at the Common Law; and by Statute Law, Mayhems, Treſpaſſes, Burglaries, and all deceits and falſities whatſoever; but they have not authority to hold Plea betwixt Party and Party by originall Writ but in ſpeciall caſes.

They have power to proceed in and determine Indictments, and Preſentments taken within any County within the Realme where the Kings Writ runneth, if it be certified by *Certiorare*, or be delivery under the hands of the Iuſtices of the Peace, or other Iuſtices before whom

the Indictments or Presentments be; whether it be of Treason, Felony, forcible entre, Ryot, or any other thing against the Peace; and they have Authority to reverse Iudgements given in the Common Pleas by a Writ of Errour, or before Iustices of Assize, and in Liberties and Franchises but not in *London*; for a Writ of Errour, of a Iudgement given before the Sheriffes of *London* shall be reversed before the Major in the Hustings.

And erronious Iudgements given before the Major in *London* shall be reversed at *St. Martins* before speciall Commissioners assigned to that purpose; and thereupon a Writ of Errour shall be directed to the Major to have the Record and proceedings thereof, and the Record shall be certified by the Recorder, &c.

And it is said, that if an erronious Iudgement be given in *Ireland*, it shall be reversed in the Kings Bench by a Writ of Errour, for that in *Ireland* the Lawes of *England* are used.

And if an erronious Iudgement be given in the Cinque Ports, it shall be reversed in the Kings Bench, and the Writ shall be directed to the Warden of the Cinque Ports, and he shall returne the Writ and the Record, &c.

The King may have a Formdon in the Kings Bench, Debt, Detinue, and every other Action, and a *Quere impedit* at his pleasure. And a common Person may bring an Action of trespasse *Quare vi & armis*

armis in the Kings Bench, and Actions for forging of false Deeds, maintenance, Conspiracy, Actions of deceit upon the case, or supposing any falsity and deceit, where the King shall have a Fine, &c.

And note that there are some Actions upon the case which shall be sued in the Kings Bench, and some not; as an Action upon the case against one supposing that the Defendant hath sold Land to the Plaintiffe for a certaine summe of Money, and that he covenanted to infeoffe him by such a day, and not by any Deed, &c. Or to build a house such a day, and did not doe it, &c. such actions shall be brought in in the same Court; but there are other Actions upon the case, which shall not be brought in the Kings Bench; as if a Horse be stollen out of the common Inne, an Action upon the case lyeth against the Hosteler, but not in the Kings Bench, as it is said. And so it is where a man is so bounden to keepe his fire, that the same hurt not his Neighbours houses, &c.

And note, that the chiefe Iustice of the Kings Bench is made by Writ, and not by Patent, and it is to this effect; *Rex dilecto & fidel. suo.* I Fitz-Iames Salutem, *Quia volumus quod vos sitis capital. Iusticiar. noster ad placita corem nobis tenenda vobis mandamus quod officio illi intendatis*, but he shall be sworne by the Chancellor of *England* before he take upon him his office.

The other Iustices of the same Court are made by Patent, *viz.* by these words; *Con-*

ſtituimus &c. unum juſtitiorum noſtr. ad placita eorum nobis tenenda, habend & occupand officium illud quam diu nobis placuerit.

And if a King maketh a Iudge to hold and enjoy the ſaid Office by himſelfe, or his ſufficient Depury for life, the grant is void as to the Depury, and if the grant be to him and his Aſſignees, he cannot make an Aſſignee, &c.

The Common Pleas.

AND note, there is another Court called the Common Pleas, which Court hath juriſdiction to hold Common Pleas, as well perſonall Pleas as reall, or any other *Precipe quod reddant*, of Lands or Tenements, &c, of Debt, Detinue, Accompt, and other perſonall Actions; and they have power to hold Plea of any of thoſe Actions, which may be brought in the Kings Bench as Actions of Maintenance, Conſpiracy, Forgery of falſe Deeds, and Actions upon the caſe, and treſpaſſe againſt the Peace, of ſuch Actions wherein the King ought to have a Fine, and alſo of Attaints; but they have not power to hold Pleas of Appeales of Murder, Rape, Felony, Mayhem, nor to enquire of them, nor of Riots.

And it is ſaid, That one may Sue the Peace againſt another before the Iuſtices of the Common Pleas, and if the Party be in the Hall, or in the Place, or within their View,

View, they may ſend the Warden of the Fleet to bring the party before the Iuſtices to finde Sureties, or elſe commit him to the Fleet; and the reaſon why they may ſo doe is, that good order, and the Peace be kept about the Court; but the Iuſtices have not power to award Proceſſe to the Sheriffe to Arreſt the party to appeare in the Court where the Common Plea is; but it is otherwiſe of the Kings Bench, as it is ſaid, &c.

And it is ſaid, That the Iuſtices of the Common Pleas have juriſdiction in ſome things which touch the Crown, and to enquire and hold Plea of ſome felony, and alſo of miſpriſion, and of deceit done within the Court, and within the Record thereof.

And if one imbeſell a Pannell after the Enqueſt paſſed, and Iudgement given in the Common Pleas, by which the Iudgement is reverſable by Errour for want of that Pannell; the Iuſtices of the Common Pleas have power to enquire of the embeſelment of the Pannell by 12. of the Officers and Attornies of the ſame Court, and they ſhall be ſworn before the Iuſtices to enquire of that default; and if they endite the embeſſelors they ſhall be Arraigned thereupon, and ſhall be compelled to anſwer thereunto as other Felons, &c. and if they be attainted they ſhall forfeit their goods and chattels, *tamen quære, &c.*

And if one be condemned in Debt, or treſpaſſe in the Common Pleas, and he be in the Hall, the Iuſtices at the prayer of

the Plaintiffe may ſend the Warden of the Fleet to bring him before them, to ſatisfie the party the money, or otherwiſe commit him to the Fleet.

And when he appeareth and will deny that he is the ſame perſon, then *Quære* what ſhall be done, if the Juſtices may commit him to the Fleet or not? And ſome ſay not, for that they know him not as Judges, but as other men by information of the parties; and the Plaintiffe cannot maintaine that he is the ſame perſon, becauſe he commeth not in but by information of the party Plaintiffe, & not by Proceſſe of Law; *Quære* what is to be done in that caſe?

And ſee another difference betwixt the Judges of the one Bench and of the other, for it is ſaid, That if the Judges of the Kings Bench doe award Proceſſe in a Formedon, a Writ of right, or execution of Land recovered in value, the Sheriffe ought to execute the Writs although they have not any juriſdiction therein. But if the Judges of the Common Pleas will grant Proceſſe of Treaſon, &c. out of their place, the Sheriffe ought not to execute the Proceſſe, for that authority is onely of Common Pleas, &c.

The chiefe Iuſtice of the Common Pleas is made by Patent, *viz.* by theſe words *Conſtituimus ipſum capital. Iuſticiar. noſtrum de Coi Banco, &c. Habendum illud cum feodis vadiis & regardiis, eidem officio debit & conſuet.* And the other Iudges of the ſame Bench are made by Letters Patents, &c.

The

The Chancery.

AND note, that the Court of Chancery is a Court of a high nature, out of which Court iſſue all originall Writs, and there a man ſhall traverſe Offices and ſuch things; and in that Court women who are widowes to the King ſhall be ſworne that they ſhall not marry without the Kings Licence, before the time that they be endowed; and it is ſaid, That of errour there upon a Patent, or a Traverſe, the ſame cannot be reverſed elſe where but in Parliament, *Quære &c.* And in that Court a man ſhall have remedy for that which he hath no remedy at the Comuon Law; and it is called by the common people, *The Court of Conſcience.*

And therefore ſee of matters in Conſcience, how the party ſhall have remedy.

If a man hath Feoffes to his uſe, and maketh his Will, and thereby willeth that his Feoffes ſhould make an eſtate to *I.* for terme of his life, the remainder to *C.* in Fee; if the ſaid *I.* will not take the eſtate what remedy is for him in the remainder, in conſcience, and how he ſhall helpe himſelfe in Chancery, &c.

A man ſhall have remedy in Chancery for Covenants made without writings, if the party have ſufficient Witneſſes to prove the Covenants, and yet he is without remedy at the Common Law, &c. And for Evidences, when a man knowes not the

certainty of them, nor in what they are contained; it is usually to be releeved in Chancery, for he is without remedy by the Common Law, &c.

If a man infeoffeth another of certaine Lands to his use, and the Feoffee selleth the Land to another, if he giveth notice to the Vendee at the time of the sale of the intent of the first Feoffment, he is bounden to performe the will of the first Feoffer, as it seemeth in the Chancery.

A man was bounden unto another by Obligation in a certaine summe of money, and the Obigee brought an Action upon the same Deed in another County then where the Obligation was made, and had Judgement to recover; and the Obligor in Chancery sued to be releeved, and it was surmised that by that forraigne Suit he was outed of diverse Pleas which he might have had, if the Action had been brought in the County where the Obligation was made, and it was conceived a good matter to releeve him in equity.

In the Court of Chancery a man shall not be prejudiced by mispleading, or for want of forme, but according to the truth of the Cause judgement ought to be given according to equity, and not *Ex rigore juris*. And note that there are two jurisdictions, Ordinary, and Absolute; Ordinary is as positive Law, and Absolute is *Omnibus modis quibus veritas sciri poterit*.

If a man be bounden by Obligation unto two men unto the use of one of them, an a-

and one of them *viz.* is he to whoſe uſe it is not, releaſeth to the Obligor all Actions, ſo as the Obligation is diſcharged, he to whoſe uſe the Obligation was made hath good remedy in Chancery by Subpœna againſt his companion who releaſed him, but againſt the Obligor it ſeemeth he hath no remedy, for every man is bounden to helpe himſelfe, and it is lawfull for a man to get a diſcharge of that which he is charged withall, and in danger to others.

And if a man hath recovered againſt another debt or damages, and he hath paid the ſame without any Acquittance, or without having a releaſe, and notwithſtanding the party taketh execution againſt him upon the ſame Iudgement, he ſhall have no remedy by the Common Law; and it was then ſaid by the Chancellor that he ſhall not have any remedy in equity in this caſe; and if the ſame ſhould be remedied in equity, then every Record ſhould be examined before him, and thereby the Common Law overthrowne.

And if I doe inſeoffee one upon truſt, and the Feoffee doth inſeoffee another of the ſame Land upon truſt, *Quære* if I ſhall have a Subpœna againſt the ſecond feoffee, but where he is inſeoffed *bona fide*, there the firſt Feoffer is without remedy againſt the ſecond Feoffee, as it ſeemeth.

It is ſaid, That the Chancellor of *England* whereſoever he ſhall be in *England*, hath power to command a man to priſon, and he ſhall not be bayled; *Quære* whether the

the Iuſtices of the one Bench, or of the other, out of their Courts have the ſame authority or nor.

The Exchequer.

THe Court which is commonly called the Exchequer, is properly for Accomptants, Sheriffes, Eſcheators and the like, and there they are compellable to make their Accompts according to the uſages and cuſtomes of the ſame Court, &c. and it ſeemeth to be a Court which is much for the Kings profit, for there all remedies are provided, how the debts and duties to the King ſhall be levyed.

And in that Court the Barons are Iudges betwixt the King and his Subjects, and they are ſworne thereunto; and Fines, Iſſues, and Amercements which are aſſeſſed in other of the Kings Courts, the eſtreates ſhall be made thereof to the Court of Exchequer, and there they ſhall write forth Proceſſe againſt the parties to anſwer thereunto, and to ſatisfie the King what is due to him, and of divers other matters they have power and authority by reaſon of their Office, &c.

The Cinque Ports.

THere are alſo divers other Courts, and inferiour places where Iuſtice is miniſtred,

ſtred, and in thoſe places they have Iudges, as in the Cinque Ports, and ſuch places which have Counſans of Pleas, and alſo in Court Barons, in which Courts is Iuſtice done according to Law, &c. And although they of the Cinque Ports ought to be empleaded of their Lands within the juriſdiction of the Cinque Ports, yet that holdeth onely where the Tenant ſheweth the ſame, and taketh advantage thereof if he be impleaded in the Kings Courts of things which are within that juriſdiction; but if the Tenant be ſued in the Common Pleas for Lands within the Cinque Ports, if the demandant doth recover by default, or if the Tenant appeare, and plead any matter which is found againſt him, ſo that the demandant hath judgement for to recover the Land, that judgement ſhall bind him for ever, &c. But the Tenant might have alſeadged, That the Land was within the Cinque Ports, and by ſuch Plea the Kings Courts ſhould be outed of the juriſdiction, &c.

And ſo it is of Lands within an ancient demeaſne, if a Writ be brought thereof in the Common Pleas, if the Tenant appeareth and pleadeth, and doth not take exception to the juriſdiction, and the Plea be found againſt him, ſo that the demandant recovereth, the Tenant ſhall not reverſe the judgement by a Writ of Errour, becauſe the Tenant might have taken exception to the juriſdiction of the Court, and it ſhould have been allowed, &c. But yet the

the Lord may reverſe that judgement by a Writ of deceit, and ſhall make the Land ancient demeaſne as it was before, &c.

And if one hath Counſans of Pleas in a Towne, or in a Mannor, and a Writ is brought in the Common Pleas of the ſame Land, and the Tenant pleadeth, and judgement is given againſt him, the recovery is good, for it is within the power of the King, and the Writ of the Common Pleas doth take place there; and if the Bayliffe, or Lord doth not demand Cognuſans the judgement is good. But in another Action the Bayliffe ſhall have Cognuſans for that the nature of the Land is not changed, and ſo ſee that where a man hath counſans of Plea, &c. it ought to be demanded by the Bayliffe, or the Lord, and the Tenant ſhall not demand the ſame if he be impleaded in the Kings Court; but of the ancient demeaſne there it behoveth the Tenant to ſhew the ſame, and plead to the juriſdiction, &c. if he will have advantage thereof, &c.

And ſo note, that in the Cinque Ports there is ſuch a liberty that the Lands and Tenements are pleadable there before the Barons, &c. and yet if one be impleaded at the Common Law of Lands within the Cinque Ports, the Barons ſhall not have Counſans of the Plea, but the Tenant may plead the ſame to the juriſdiction in abatement of the Writ, &c.

The

The Court Baron.

NOte alſo that there is another Court which is called Court Baron, in which Court the Suitors are the Judges, and not the Steward; and they hold plea of Contracts within the juriſdiction, &c. and yet it is ſaid by ſome, That the Defendant ſhall not ſhew that the Contract was made out of the juriſdiction, and pray that the Plaintiffe be examined as in a Court of Pipowder.

The Judges of the Court Baron have Authority to hold plea before them of Debt upon Contracts, or Detinue, but not of detinue of Charters, nor Actions of debt upon a judgement in a Court of Record, but otherwiſe I thinke it is of a recovery in the ſame Court; nor ſhall they hold plea of Maintenance, forgery of falſe Deeds, of deceit, nor of *Decies tantum*, nor of pleas of Accompts, for they have not authority to aſſigne Auditors. They ſhall not hold plea of Debt above the ſumme of forty ſhillings, unleſſe it be by preſcription; and they ſhall not hold plea of Free-hold by plaint, but by a Writ of right they may. But if a judgement be given of Free-hold upon a plaint, it is ſaid it is good untill it be reverſed by a Writ of falſe judgement, *tamen quære, &c.*

And note for what Suit a man ſhall be judged in a Court Baron, and it is ſaid, That it is where a man is ſeiſed of Lands in Fee-ſimple, and which he holdeth by ſervice

vice of Suit at the Lords Mannour, that Suit is properly Suit-ſervice, and for ſuch Suit he ſhall be judged in a Court Baron, and for no other Suit as it is ſaid, &c.

And *quære* alſo, when erronious judgements are given how they ſhall be reverſed, *viz.* when by Writ of falſe judgement and when by a Writ of Errour. And ſome ſay, That in all Courts where the party might remove the plea by a *Recordare* upon a judgement given, in ſuch Courts a Writ of falſe judgement lyeth; as in ancient Demeaſne, Court Baron, County Court, and Hundred; but in other Courts which are of Record the plea ſhall be removed by a *Certiorare*, and upon judgement given in ſuch Courts which are of Record, it ſhall be reverſed by a Writ of Errour, &c.

And if a man recovereth in a Court of Record by erronious judgement, and Sueth not Execution, ſome ſay, That a Writ of Errour lyeth, and the party ſhall have a *Superſedeas* if he will prey the ſame; but if a man hath judgement in a Court Baron, and taketh not forth Execution, no Writ of falſe judgement lyeth: *Quære* the reaſon thereof, and what the Law is in that caſe.

And note that ſometimes the Sheriffe is Judge, as in Reddiſſeiſin, Waſt, and Admeaſurement, and the Proceſſe ſhall be ſerved by the Baily as is ſaid.

And note that the Sheriffe is an Officer to the Kings Court, to execute the Proceſſe thereof; yet ſometimes the Coroner is the Officer to the Court where defect is found

found in the Sheriffe, &c. ſo that he cannot by Law indifferently execute the Proceſſe as for divers apparent cauſes, yet if the Sheriffe dyeth the Proceſſe ſhall not goe to the Coroner, but ſhall ſtay till another Sheriffe is choſen, &c. And becauſe the Sheriffe is an Officer appointed by the Law to attend the Kings Courts, a man ſhall not take an Averment againſt the returne of the Sheriffe directly, and the reaſon is, becauſe where Juſtice ought to be miniſtred and executed, thoſe who have the Government of the Law ought to repoſe truſt and confidence in ſome perſon, and if every one might averre againſt that which the Sheriffe doth, then Juſtice ſhould not be executed, but ſhould for ever be delayed, &c.

The meanes and the remedy how a man may come to his due, and to that which is wrongfully kept from him, and that is by plea, and this word is generall, and hath divers effects implyed therein, and may be divided into divers branches, *viz.* Into pleas of the Crowne, as appeales of Death, Robbery, Rape, Felony, and divers other things, &c. and into Actions reall, whereby Lands, Tenements, Rents, and other hereditaments are demanded, as Writs of right, Formedon, &c. Or Actions poſſeſſory, as Writs of Entre, Aſſize of Mordameſter, Coſinage and the like, &c. And it may alſo be divided into Actions perſonals, as Debt, Treſpaſſe, Detinue, &c. and into Actions mixt, as into Aſſizes, and Actions

ons of waſt which are as well in the realty as in the perſonalty. A perſonall plea may be divided into two parts, one into a meere perſonall plea, as an Action of debt, detinue, where none hath intereſt but the parties themſelves; the Plaintiffe and the Defendant. And the other part is mixt in the Crowne, the Plaintiffe and the Defendant have not the ſole intereſt in thoſe Actions, but the King hath an intereſt in them alſo to have a fine; as in an Action of Treſpaſſe, *Vi & armis*, and that is an Action mixt with the pleas of the Crown, &c.

And note that in matters of the Crown, for ſuch for which a man ſhall ſuffer death, ſome may be principalls and ſome acceſſories, as Murder, Felony, Rape, and the like; but in High Treaſon I conceive all are principalls, & in petit treaſon there may be principall and acceſſory as well as in felony

In a Premunire all are principalls, and in cutting out of Tongues, and putting out of Eyes there may be an acceſſory as well as a principall, as is ſaid, &c.

In Robbery all are principalls who are preſent at the time of the Robbery done, otherwiſe it is in Murder; for if one be preſent and doth nothing he is an acceſſory, and not a principall, &c. In Mayhem ſome ſay, that all are principalls, as well he who is comforting and abetting as he who giveth the Mayhen; as it is in Treſpaſſe, *tamen quære*, for I conceive the Law to be contrary, &c. And it was ſaid, That if a man be preſent at the death of a man, and moveth

moveth another to kill the man, that he is a principall, notwithſtanding that he giveth him not any ſtroke, and notwithſtanding that the Count in every Appeale is, That every principall did mortally ſtrike and wound him, &c. but thoſe are words of forme, and the blow of him who ſtruck is the ſtroke of him who commanded him when he was preſent.

And it is to know that for ſuch things for which a man deſerveth death, there are two waies to bring him to anſwer the ſame; one by Appeale, which is at the Suit of the party the other is by way of Indictment, which is at the Kings Suit, &c. And for a Mayhem the party ſhall have an Appeale of Mayhem, wherein he ſhall recover damages, and no death ſhall follow, &c. and ſee the Appeale following, and firſt of the Appeale of the death of a man, &c.

An Appeale of Murder.

I H. *hic inſtanter appellat* W. F. *de morte* H. C. *fratris ſui, per eo quod cum predict.* H. *fuit in pace Dei & Dom. regis apud* D. *tali die, hora, & anno. tibi venit* W. F. *uti felo Dom. Regis, in aſſultu premeditat vi & armis, &c. Et in ipſum* H. *ad tunc & ibid: felonicè inſultum fecit & cum quodam gladio precii* 12. *d. quem ipſe in manu ſua dextra ad tunc & ibidem tenuit predict.* H. *ſuper caput ſunt percuſſit & unam plagam mortalem in longitudine duorum policum in anteriori parte Capitis ſuo uſque ad*

cerebrum eidem H. *adhunc & ibid. felonicè dedit, de qua quidem plaga pred.* H. *per* 3. *dies hunc proximè sequentes languebat & tunc ibid. obiit*; or *imediate obiit. Et sic idem Iohanes ut felo Dom. Regis pred.* H. *felonicè interfecit & mundravit contra pacem dicti Dom. regis, Coronam & dignitatem suas, & quod hoc fecit nequiter & ut felo contra pacem Dei & Dom. Regis, pred. Iohannes offert hoc disrationar prout curia Dom. Regis hic consideravit, &c.*

And it seemes the Appeale of Murder ought be be brought within the yeare and a day after the death of him who is murdered; and in an Appeale the party hath two issues, to put himselfe upon the Jury to try if he be guilty or not, or to wage Battaile, and to make the Battaile with the Appellant; and if he doe gage Battaile he ought to designe the battaile in his proper person, and by no Champion. But it is otherwise in a Writ of right, &c.

And there are divers causes to ouste the Defendant in the appeale of Battaile, for it is said, That if an Infant within age bringeth an Appeale, and the Defendant sheweth that he is within age, &c. the Justices have been of opinion that he shall be put to answer the Appeale of the Appellant being within age, and the Defendant hath lost the advantage to wage the Battaile, because it was his owne Act. And I conceive that if a Woman bringeth an Appeale of the death of her Husband against another, the Defendant shall lose the advantage of Battaile; for

for he cannot Combate or deraigne the Battaile with a Woman, &c. And if a party be indicted of the Felony or Murder, &c. he ſhall not wage battaile.

And ſee that in an Appeale of the death of a man againſt two, the one as Principall, and the other as Acceſſory, and they waged Battaile, and the Plaintiffe demurred upon the plea, and it was ſaid, That the Acceſſory ſhould not be put to anſwer till the Principall was attainted or acquitted; yet it is ſaid, That the Acceſſory ſhould anſwer preſently; but the iſſue ſhould not be tryed till the Principall were attainted or acquitted; and if the Principall be acquitted the other iſſue ſhould not be tryed.

And I conceive that in every caſe of Felony where a man is indicted as Principall, and afterward hath his pardon, or forjureth the Realme, that in thoſe caſes and the like the Acceſſory ſhall not be arraigned, becauſe that when the Principalls life is pardoned in what manner ſoever it be, the Felony is determined, and by conſequence acquitted, and by the ſame reaſon the acceſſory is diſcharged. But *quære* what the Law is if the Principall have his Clergy.

And ſee that where there are three Brothers, and the middlemoſt killeth his eldeſt Brother, the youngeſt Brother ſhall have the Appeale, and yet he is not his Heire. The ſame Law where the eldeſt Brother killeth his Father, the youngeſt ſhall have the Appeale if there be but two Brothers.

And where the Wife killeth her Husband, the Heire ſhall have the Appeale as it is ſaid. *Quære*, what the Law is in the caſes before, &c.

And the Proceſſe in an Appeale of death is one *Capias*, and one Exigent, &c. but in an appeale of Robbery, an appeale of Rape and Mayhem, the Proceſſe is two *Capias*, and one Exigent, &c. And note that a man can never have an appeale of Robbery, Rape, or Mayhem by diſcent, for the ſame ſhall never diſcend; but it is otherwiſe of Murder.

And alſo note, that the appeale ſhall not abate, if in the Declaration be the yeare, day, and other time when the Felony was done, and it ſhall not abate for want of Freſh-ſuit, if it be not within the yeare and the day, and that is by the Statute of Glouceſter, &c.

In an Appeale if the Defendant plead that the Plaintiffe is a Baſtard, and he is certified to be *mulier*, yet the Defendant ſhall be received to plead not guilty, becauſe at the beginning when he alleadged Baſtardy, he might have pleaded over to the Felony, becauſe he demanded another tryall, for the one is tryable by the Record, and the other by Enqueſt. But of ſuch matter which is tryable by Enqueſt if he pleadeth to the Felony, all the ſame ſhall be tryed by one Tryall, and by one Enqueſt. In an Aſſize, if the Tenant alledge Baſterdy in the Plaintiffe, and the Biſhop doth certifie

muliarity,

muliarity, yet the Aſſize ſhall be taken to enquire of the ſeiſin and diſſeiſin, *quære.*

And *quære* if a man in an appeale plead a plea which is tryable in another County, if he ſhall plead over to the Felony, becauſe he demandeth two Tryalls.

Appeale of Robbery.

THe Writ of Appeale of Robbery beginneth thus:

A. B. *nuper de London generoſus, attachiatus fuit ad reſpondendum,* R. F. *generoſo ſimal cum* D. *nuper de* F. *in ſuburbiis London, de robberia & pace domini regis nunc fracta, unde eos appellat, & ſunt plegii de proſequend.* A. D. *et* C. *Et unde idem* R. *in propria perſona ſuo inſtanter appellat pred.* C. A. *de eo quod ubi idem* R. *fuit in pace dei et Domini Regis nunc apud London, viz. in parochia ſancti Dunſtani in Fleetſtreet in ſuburbiis Londonj* or, *apud talem villam in tali Comitatu,* 20. *Octobris Anno Regni Regis nunc* 17. *circa horam ſeptimam poſt meridiem ejuſdem diei venerunt tam pred.* W. I. *et* K. *qui modo non comparent, quam pred.* A. *qui modo comparet, felonicè ut felones Dom. Regis nunc inſidiando et inſult præmeditat contra pacem Regis nunc coronam et dignitatem ſuas die, anno, hora parochia, et wardo pred.* or *villa et com. predict. Et pred.* W. *unam galeam precii* 26. s. 8. d. *et unam crateram argenteam et deauratum precii* 40. s. *de bonis et catallis pred.* R. *ad tunc ibid.*

invent. felonicè furatus eſt, cæpit et aſportavit. Et pred. C. A. *et* I. K. *die, anno, parochia et warda pred. or vile et comitatu pred. felonicè confortaverunt, ſuſtentaverunt et auxiliaverunt pred.* W. *ad felonian pred. in forma pred. faciend et perpetrand ac eum tunc et ibidem ad feloniam illam factam, ſciente eum feloniam illam ſic fecisſe receptaverunt. Et quam citò idem felones felonias, predictas in forma predicta feciſſent, fugierunt, predictus* R. *eos recenter inſequitus fuit de warda in wardam* (if the Appeale be brought in London) or *de villa In villam,* (if it be brought in any County) *uſque ad quatuor wardas propinquiores. Et alterius quouſque, et c. Et ſi predictus felo qui modo comparet feloniam predictam vult contradicere, predict.* R. *hoc paratus eſt verificare et verſus eum probare prout curiæ, &c.*

And the like Declaration is in burning of Houſes, and of Burglary, *mutatis mutandis.*

And the Defendant in this Appeale ſhall have the ſame tryall as he ſhall have in the appeale before rehearſed, to put himſelfe upon the iſſue tryable by the Enqueſt, or to wage Battaile if he pleaſeth.

But there are certaine things which ſhall put the ſame from that advantage, that he ſhall not wage Battaile, &c. *viz.* If the Defendant be indicted of the ſame felony, &c. and if the Plaintiffe be mayhemed by the Defendant, or by another as I conceive; or if the Defendant be taken in the manner, or if the Plaintiffe be within age, or above the

the age of forty yeares; or if the Plaintiffe be a woman or the like.

And note that if the appeale of Murder, Robbery, or Rape be brought in the Kings Bench, and iſſue be taken before the Juſtices of Aſſize, if the Plaintiffe be non-ſuit they have not power to arraigne the Defendant; but if the appeale be brought before them, and afterwards the Plaintiffe is Non-ſuit, it is otherwiſe as it is ſaid.

And there is another difference when a man is arraigned at the Kings Suit, and when at the Suit of the party; for if he be arraigned at the Kings Suit, he ſhall be put to anſwer the Felony, whether he be of that name or of another name; and it ſhall be no plea for him to ſay, That he is not of that Sir-name, nor knowne by ſuch a name, but by another name; for if a man killeth another and is indicted thereof, he ſhall anſwer to the Felony, and ſhall not be admitted to plead miſnoſmer; but if it be at the Suit of the party it is otherwiſe, as if a man bring an appeale againſt another, there he ſhall be admitted to have the plea, and that is the difference.

Note that if a man bringeth an appeale of the death of a man who hath lawfull cauſe to have the appeale, and after Declaration he is Non-ſuit, the Defendant ſhall be arraigned a new at the Kings Suit; but if the Heire of the dead ſueth the appeale, his Wife being alive, and after Declaration the Heire is Non-ſuit; the Defendant ſhall not

be arraigned a new at the Kings Suit, becauſe that none could Sue the appeale but the Wife, and ſo the Declaration was without warrant. And *quære* how that matter may appeare to the Court.

And if one be acquitted in Appeale, or indictment wherein there is no errour in the Originall; he ſhall be arraigned *De novo* at the Kings Suit, although that errour be in the *Capias* or Exigent. But if errour be in the Originall, and he is acquitted, he ſhall be arraigned *De novo* at the Suit of the King, becauſe that his Arraignment was never warranted but without warrant; for when the King is aſſertained of a Felon, and of the day and yeare, if the Felon be not lawfully acquitted of the ſame Felony he ſhall be arraigned at the Kings Suits. But if he be once lawfully acquitted of the Felony, he ſhall never put his life in hazard againe for the ſame Felony, if it be not for Murder, in which caſe it is ſaid, That if a Murderer be acquitted within the yeare at the Kings Suit, he may be afterwards in an appeale arraigned within the yeare at the Suit of the party, &c.

And if an appeale of Murder be brought before the Sheriffe and Coroner in the County, it is ſaid, That it may be removed into the Kings Bench by a Writ, which ſhall be directed to he Coroner, and not to the Sheriffe, becauſe that the Coroner hath the Record; yet I thinke the Law is otherwiſe.

And

And if one be indicted for Murder, and afterwards an appeale is brought againſt him, and after Declaration the Plaintiffe is Non-ſuit, the Appellee ſhall be arraigned at the Kings Suit upon the Declaration, and not upon indictment, as it is holden in 4. *E.* 4.

Note that it was ſaid by ſome Juſtices in times paſt, That in every caſe where the Defendant pleadeth a matter, whereby he proveth that the action doth not lye for the Plaintiffe as Baſtardy, or never accoupled in loyall Matrimony, &c. there he need not to anſwer to the Felony; but if he pleadeth a releaſe in Bar, then he ought to plead to the Felony, becauſe it is not denyed by him that the Action once lay for the Plaintiffe, for when he pleadeth to the Felony then he confeſſeth that the Plaintiffe is ſuch a perſon who can maintaine the action; yet it was ſaid to the contrary, That he ſhall not plead to the Felony *infavorem vitæ*, where otherwiſe if the plea were found againſt him he ſhould be attainted, and the Felony not enquired of, and that ſeemeth to be both reaſon and Law, &c.

And note, that when a man is found guilty for Murder, or Felony, &c. for which he ſuffereth death, he may pray his Booke to ſave him if he be a Clerke, and ſhall have it if he can read. But if that Bigamy at another time convicted be alledged againſt him, and proved, then he ſhall not have his Clergy.

And it was ſaid, That if the Ordinary refuſeth a Clerke generally, or ſpecially, that the

the Judge may compell him to accept the felon. But the old Law was, That if the Ordinary had refused him specially, as to say, *Non habet vestem Clericalem, non habet consuram*; yet the Judge might compell him to accept of him. But if the Ordinary doe refuse him generally, the Judge cannot compell him to accept of him, because there may be some cause wherefore the Ordinary by the Law of Holy Church ought not to receive him. But that opinion as it was said, was altered in the time of *William Hussey*, and his reason was, That if this Judge be his Judge where the Ordinary refuseth him specially, it is as great reason that he shall be his Judge where he refuseth him generally.

And see, that those who are so attainted of Murder, or of other Felonies, and for such things as they shall suffer death, they shall forfeit their Lands and Tenements, and their goods and chartels for ever, and the King shall have the Lands for a yeare and a day, and then the Lords of whom the Lands are holden shall have them. But he who is attainted of Treason, the King shall have all his Lands, as well those which are holden of other Lords as those which are holden of himselfe, &c. And if a man hath Land in the right of his Wife, and is attainted of Felony, the Land shall be forfeited for the terme of his life; and it was said, That if before the Attainder, he and his wife were disseised, and afterwards he were attainted and restored to the Kings peace; yet they could not have an Assize. *Tamen quære.*

Appeale of Rape.

NOte alſo that the Appeale of Rape beginneth thus:

Robertus Wood *nuper de* A. *in Comitatu Salop Clericus, dict.* R. W. *nuper de* A. *in comitatu predict capellanus Rector Eccleſiæ parochialis de* A *in comitatu predict.* Or thus; *Nuper de* D. *in comitatu predict. gent. alias dict.* R. S. *nuper de* D. *in com. predicto yeoman attachiatus fuit per corpus ſuum, ad reſpondendum Alicie.* G. *de raptu ipſius Alicie, & pace Dom. regis nunc fracta, unde eum appellat. Et ſunt plegii de proſequend.* A. D. *de* C. *in comit.* C. *gentleman, &* E. I. *de* M. *in comitat.* C. *yeoman, &c. Et unde eadem Alicia in predict perſona ſua inſtanter appellat predict.* R. W. *de eo quod ubi predict. Alicia fuit in pace dei & Domini Regis nunc apud* A. *in predict. in comit. Salop, 8. die menſis Maii ann. Regni Dom. Regis,* 17. *circa horam ſextam poſt meridiem ejuſdem diei, ibidem venit predict* S. *felonicè ut felo predict. domini regis nunc inſideand. & inſultu premedita contra pacem ejuſdem dom. regis coronam & dignitatem ſuas, die, anno, hora, & loco in comitatu predict. & in prefatam Aliciam ad tunc & ibid. inſultum fecit, & ipſam ad tunc & ibid. de virginitate defloruit contra voluntatem ſuam raduit & carnaliter cognovit, & ſic predict.* R. S. *predict. Aliciam modo & forma predict. rapuit, & quam cito idem felo felonian & raptum predict. feciſſit, fugiit, dictaq; Alicea ipſum recenter inſecuta fuit de villa in villam*

uſq;

usq; quatuor villas propinqiores, & ulterius quousq; &c. Et si idem felo felonium et raptum predict. in forma predict. imposit didicere velit, predict Alacia hoc parata est verificare et versus eum probare, prout curia, &c.

And if a man Sueth an Appeale of the Rape of his Wife, although she be not his Wife in right but in possession, yet the Appeale doth well lye as is said; otherwise it is in an Appeale of murder brought by a woman of the death of her Husband, for there it is a good plea, that they were never lawfully coupled in Matrimony.

Appeale of Mayhem.

SEE also that the Appeale of Mayhem is as followeth: *viz.*

I. N. *in propria persona sua hic instanter appellat* W. *de* F. *de eo quod cum idem, quære tali die & anno fuit in pace dei, et Dom. Regis nunc, &c, apud talem villam in tali comitatu circa horam sextam, &c. Ibi venit predict.* W. *vi et armis, viz. baculis ut felo domini regis nunc insidiand. et ex insulta premeditete ad tunc ibid. in dictum* I. *insultum fecit et ad tunc et ibid. cum quodam baculo precii, &c. quem predict.* W. *in manibus suis ad tunc et ibid. tenuit, predict. querentem super brachium dextrum felonicè tunc percussit, per quod vene et nervi brachii sui perdict. restricti fuerunt ac neci, et mortificat devenerunt;* Or, *cum quodam gladio, vel cultello precii &c. quem*

&c. quem defendens in manibus ſuis ad tunc & ibid. tenuit manum dexteram, vel policem manus dextere, vel aliud membrum, vel auriculam, vel aliquam junctu am membri querentis felonicè amputavit, vel oculum ſuum evulſit, vel dentes ſuos anteriores fregit et depoſuit. Et ſic idem defendens ut felo Dom. regis predict. quer. ad tunc et ibid. felonicè mayheymavit, contra pacem dicti Dom. Regis Coronam et dignitatem ſuus. Et ſi defendans hoc velit dedicere, querens hoc paratus eſt verſus eum probare, prout curia Dom. Regis de eo conſideraverit, &c.

And notwithſtanding that the Plaintiffe declare in an appeale of Mayhem, that the Defendant hath mayhemed him felonioufly, yet the Defendant ſhall not ſuffer the puniſhment of death, but ſhall anſwer damages according to the greatneſſe and grievouſneſſe of the offence, &c. And if the Plaintiffe declareth in an appeale of Mayhem, &c. and the Defendant prayeth that it may be viewed if it be a Mayhem or not, *Quære*, if the Juſtices ſay, That he is mayhemed, if it be peremptory to the Defendant, ſo that he ſhall not be afterwards receiveable to plead not guilty to it, or any other barre. And I conceive it is peremptory, &c. And in an appeale of Mayhem the Plaintiffe declared, That the Defendant ſtroke him upon the head, ſo that he had loſt his hearing, and becauſe the Juſtices talked to him, and well perceived that he could heare they ſaid that the Plaintiffe ſhould be fined, &c.

And ſee that if the Defendant in in an appeale

peale of Mayhem saith, That the Plaintiffe at another time brought an Action of Trespasse against the same Defendant, and sued forth the same Mayhem, and recovered damages for the same, and sued execution, if the same be a good plea or not, &c. And it was said, That by an appeale of Mayhem a man shall not lose his Action of Trespasse, but contrariwise, he shall not have an appeale after he hath once recovered in Trespasse for the same Mayhem. *Quære* what the Law is.

And in an appeale of Mayhem against two, the Plaintiffe declared against one as Principall, and against the other as accessory, and it was challenged because that all ought to have been principalls, and the Court said, It was in his election, so that the Declaration one way or the other was good enough. And it was said by some, That it is no Mayhem to cut off ones Eare, whereby he loseth his hearing, &c. but the bearing out of his Teeth is a Mayhem, because he may by them defend himselfe in Battaile. *Quære* if in the first case it be not a Mayhem, &c.

Indictments.

THere are also Indictments upon which a man shall be arraigned, upon which if he be found guilty he shall be executed, &c. and first see Indictments upon the view of the body taken before the Coroner in the County.

Inquisitio indemnenda capta apud B. *in Com.* N. 20. *die*

20. *die menſis Maii anno regni nunc Regis Henrici, octavi* 20. *coram* I. W. *uno Coronatorum Dom. regis nunc Com. predict. et ſuper viſum Corporis cujuſdem* I. F. *ibid. jacentem interfect. per Sacramentum,* I. S. W. C. &c. *Qui dicunt ſuper Sacramentum ſuum. Quod quidam* I. N. *de London gent.* 20. *die, &c. Ann. &c. vi et armis, viz. gladiis beculis et cultellis animo felonico et ex malitia procogitata in prefatum,* I. F. *apud* B. *predict. inſult. fecit et ipſum verberavit, vulneravit et male tractavit, ac dict.* I. M. *cum quodam cultello vocat a wood knife precii* 12. *d. quem ipſe in manibus ſuis ad tunc tenuit, prefat.* I. F. *ad tunc et ibid. uſq; ad mediam corporis ſui felonice percuſſit atq; invaſit in profunditatem decem pollic. dans ei plaguam mortalem, de qua quidem plaga dict.* I. F. *infra unam horam tunc proxime ſequent. ad tunc et ibidem obiit, et ſic predict.* I. N. *eundem* I. F. *ad tunc et ibidem felonice interfecit et murdravit, contra pacem Dom. Regis, &c.*

And it was ſaid, That the Coroner hath not power to take any Enqueſt of the death of a man if not upon the view of the body, & if he doe it, in other manner, all that he doth is void.

And it hath been uſed in times paſt that the Coroners might record the breaking of Priſon by the Priſoners which are in them, and if the Priſoners were in for felony, they were put to execution without further anſwer; but *quære* if any ſuch Law be now in uſe.

And a Coroner might take an appeale of an Approver, of felony done in any County of *England*,

England, and in the same manner he might make abjuration, if he affested the felony to be done in another County then in the County where the Coroner dwelt. And the reason was, because by that confession they shall be attainted. But he cannot so doe in an appeale of Robbery, if the felony be not done within the same County.

There are also divers Indictments, as of Robbery, Burglary, and other felonies which are mentioned in sundry books, and the course of them is well known, because they are common, and in daily use and experience.

If a man be indicted that he feloniously cut down Trees, &c. in such a place, and carried them away, the party shall not be arraigned upon such indictment, because it cannot be said to be felony.

A man was indicted for that he traiterously, &c. had made 100. s. of Alchamy to the likenesse of the Kings money, and it was moved that the indictment was sufficient, because it was not put certaine what money he made, groats or pence.

A man was indicted, That whereas another man was indicted of felony who was put into the Stocks, &c. that he entred into the house without breaking of the same, and set him out of the Stocks, and set him at liberty, and it was said, That it remained in the pleasure of the King, whether he should have perpetuall imprisonment, or other pecuniary punishment according to the Kings Ordinance, but he shall not be hanged, &c.

And

And ſee that it was the uſe in times paſt, that the party ſhould not be reſtored to his goods upon an Indictment of Robbery, unleſſe it were found that he made freſh-ſuit, if he were not appealed, yet that Law is altered and changed, and the party ſhall be alſo reſtored to his goods where the felon is arraigned upon an Indictment as well as upon an Appeale, if the party giveth evidence againſt the felon at the time of his Arraignment, and he ſhall not be put to circuit of Action to ſue his appeale, and it ſeemeth to be good Law.

Note, that the Writs are the principall and firſt thing in our Law, whereby a man ſhall recover that which is wrongfully detained from him, and they are the foundation of every Suit; and therefore looke when a man beginneth his Suit that the Writ be good, elſe all which followeth will be nothing worth; which Writs are ordained by Law according as the matter is.

And there ſee firſt the Writ of Right and the nature of it, becauſe it is a Writ of a higher nature then any other Writ can be; and the chiefe things and Articles of that Writ are, the deforcement, the quantity of the Tenements in what Towne the Tenements are, and that the demandant hath a lawfull eſtate in fee by his owne Purchaſe, or of the ſeiſin of his Anceſtor, or his owne ſeiſin, the taking of the Explees and the ſeiſin thereof, in the time of what King, and in the time of peace, and the tender of the

Demy marke a good diſcent, and in wha manner he hath right, and the averment.

And note that the Explees ought to be of the Demeſne or of the Services, and in a *Precipe quod reddat* of the manner of Explees in Services, &c. and of the Demeſnes in Sheep, and Corne, in Paſture in feeding of Cattle, of Wood, in ſelling of the Wood, Gardens, in ſelling the Apples, or Graſſe, of Villain, is in baſe ſervice to his profit, and in ſeiſin of thoſe of his blood; and for a Chaplaine, or finde-ing of poore men, the Explees are alledged in Maſſes, and Prayers, &c. and of a Gorge in taking of the Fiſh; of a Mill, in taking of Tole: And generally, a man ſhall alledge Explees accor ding to the matter in demand, and the nature of it.

And the triall in this Writ of Right may be two waies; the one by the Grand Aſſize, and the other by Battaile; but if the right be to be determined by the Battaile, it ſhall be done by Champions, and not by the parties themſelves, as it is ſaid; and the reaſon is, that if any of the parties be killed, Judgement of the Land cannot be given againſt a dead perſon. *Quære* if that be the reaſon or not.

And it was ſaid, That a man cannot have a Writ of Right of a Rent, but onely of a Rent-ſervice, for that other Rents are againſt common right, &c.

And ſee that a Writ of Right doth differ from other Writs in pleading, for in a Writ of Right the Tenant ought to conclude upon the

the right; To conclude, ſo that he hath more right to have the Lands, &c. then the demandant, and not to conclude Judgement of Action, as the concluſion is in other Writs, yet the ſame holdeth not in every caſe; for if the Tenant in a Writ of Right plead a releaſe collaterall, &c. without warranty, there the Tenant ſhall conclude Judgement if Action, and not otherwiſe as it ſeemeth; for the demandant hath more right to the Land then the Tenant hath, but by reaſon of the warranty the demandant ſhall be barred of his Action.

And note, that in a Writ of Right upon the Triall no attaint lyeth, and yet in a Writ of right of Dower an attaint lyeth, which is, a Writ of Right; but the reaſon is, becauſe the Triall thereof ſhall not be by the Grand Aſſize, nor by Battaile, but by a Common Jury, &c.

And note, that there are divers Writs of Right; a Writ of Right which is triable by Battaile, or by Grand Aſſize, as a Writ of right of Land, or a Writ of Cuſtomes and Services, a *Quod permittat* in the *debet* Writ of right of Advowſon, &c. and the like. And there are other Writs of the poſſeſſion mixt with the right, as a Writ of Eſchear, Ceſſavit, rationable part, &c. and the like, but in thoſe no Battaile nor Grand Aſſize lyeth.

In a Writ of Cuſtomes and Services, the effect thereof is the wrongfull deforcement in not doing of the Services which ought to be done to the demandant out of the Land, and

the Land ought to be shewed, and how he holdeth by such Services, and shew seisin in him or his Ancestors of Fee and Right, and alledge the taking of Explees, and the Averment.

The Articles and things which are materiall in the Writs, appeare in the Writs themselves, and in the booke of *Novel Tales*, and in other bookes, and therefore they need not to be here mentioned, and for that cause I omit them here, &c.

An Indictment upon the Statute of 8. H. 6.

JUrator present. pro Dom. rege, quod cum instatuto in Parliamento Dom. nuper Regis Henrici Angliæ sexti, post conquestum apud Westm. anno Regni sui 8. *tent. edit inter cetera ordinatum sit, quod si aliqua persona expulsa sit seu dissesita, de aliquibus terris et tenementis modo forcibili aut pacifice expulsa sit, et postea manu forti et armis extra teneatur contra justic. pacem vel post aliquem talem ingressum aliquod feoffementum seu discontinuatio aliquo modo inde factum sit ad jus possessor defraudend. aut tollend. quod pars in ea parte gravata habeat assisam novæ disseisine aut breve de transgressione versus hujus disseisitorem, et si pars gravata recuperaverit per assisam vel rationem transgr. et prevered. dictum alio modo per debitam legis formam sit compactum quod pars defendens in terras et tenem. vi ingressus fuit, aut ea per vim post ingressum tenuerit, quærens reciperes*

ciperet versus defendentem damna sua ad triplicem et ulterius finem faciet Dom. Regi, et redemptionem pro ut in statuto pred. plenius continetur, &c. Quidam tamen L. C. de E. *in com. pred. generosus simul cum quinq; personis juratoribus pred. ignotis statutum illud minime ponderans, die Dom. 20. die Januarii circa horam 9. post meridiem ejusdem diei anno Regni Dom. regis nunc 12. manu forti ac vi et armis, viz. Baculis et cultellis in unum messuagium, unum gardinum ducentas acras terre, 40. &c. prati, et 30. arras bosci cum pertinetii quorundum* E. K. *Armigeri et* L. M. *armigeri &c. scituat jacen et existen in perochia de* L. *juxta* T. *in com. pred. ingressus fuit, et inde ipsas* E. K. *et* L. M. *vi et armis, viz. baculis et cultellis ac manu forti dissertivit. Et ejus inde statum et possessionem sic per disseissinam illam habitam et obtent cum pred. personis ignotis usq; in crastinum diem sequentem, viz. 13. diem mensis Januarii continuavit. Quo quidem 13. die Januarii* H. L. *de* M. *in comitatu pred. yeoman,* W. B. *de pred. Husbandman, et* I. C. *nuper eisdem villa et comitatu laborer apud* L. *pred. in et super tenta pred. una cum prefato* T. C. *manu forti ac vi et armis, viz. baculis cultellis, gladiis scutis, arcubus et sagittis se assemblaverunt, et eadem tenementa vi et armis pred. a pred. 12. die Januarii hucusq; injurius ipsius* T. C. *et ipsum* T. *pretensa tenuerunt et prefat.* E. K. *et* L. M. *&c. inde hucusq; extra tenent in dicti Dom. Regis nunc contemptum ac contra foream statuti pred. et contra pacem dicti Dom. Regis, &c.*

When the Parties are at issue in their Acti-

ons the common Triall thereof in our Law is by Verdict of 12. men, who shall be sworne upon the Booke to speake the truth according to their conscience. And sometimes the matter shall be tried by the Bishop, and not by Verdict of 12. men; as generall Bastardy alledged in any of the parties it shall be certified by the Bishop, and in a *Quere impedit* if the issue be joyned upon the institution it shall be tryed by the Bishop, for the same is in a manner a spirituall thing. But induction shall be tryed by Jury, and also in a *Quare impedit*, if issue be taken upon Plenary it shall be tryed by the Bishop; but whether the Church be void or not void shall be tryed by the Jury. And if the Parties be at issue in a *quare impedit* upon the ability of the Person, whether he were sufficiently learned or not, it shall be tryed by the Bishop during the life of the Clerke, but if the Clerke be dead it shall be tryed by Jury. And it is said, That if Bastardy or other the like thing be alledged upon a thing which is not but dillatory, it shall be remanded to the Bishop to be tryed, &c.

And a man in an Action of Debt brought against him upon a Contract may wage his Law, to sweare upon a Booke that he oweth not the Plaintiffe the money which he demandeth, nor any penny thereof; and he ought to have with him 11. more to sweare with him, that they beleeve in their Conscience that he sayeth truth, and so he shall be discharged; but if the Action be brought upon

upon any ſpecialty, or upon matter of Record, or upon a thing touching Land, &c. he ſhall not help himſelfe in that manner, but ſhall put the ſame upon the tryall of the Jury, but he himſelfe ſhall not be admitted to ſweare, &c.

And note, that an Oath ought to have three Companions, Truth, Juſtice, and Judgement, and if they be wanting it is no Oath but a Perjury; for if a man be forced by conſtraint to ſweare, that for many yeares he quiely held ſuch Lands, &c. it is Perjury, not in him who ſweareth, but in him who compelleth him to ſweare, *Reum non facit niſi mens ſit rea. Nemo ſe circumveniat aut ſeducat. Qui per lapidem falſe jurat perjurus eſt. Quacunque arte verborum jurat aliquis, Deus ita accipit ſicut ille qui jurat intelligit. Et minus malum eſt per Deum falſum jurare veraciter, quam per Deum verum jurare fallaciter. Quanto enim id per quod juratur eſt magis ſanctum, tanto magis eſt penale perjurium, &c.*

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